BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF FINANCING TO INSTALL A WATER LINE FROM THE WELL ON TIEMAN TO WELL NO. 1 ON TOWERS.	DOCKET NO. W-04254A-12-0204
IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF FINANCING TO PURCHASE THE WELL NO. 4 SITE AND THE COMPANY VEHICLE.	DOCKET NO. W-04254A-12-0205
IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF FINANCING FOR AN 8,000-GALLON HYDRO-PNEUMATIC TANK.	DOCKET NO. W-04254A-12-0206
IN THE MATTER OF THE RATE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC.	DOCKET NO. W-04254A-12-0207
JOHN E. DOUGHERTY, COMPLAINANT, V. MONTEZUMA RIMROCK WATER COMPANY, LLC, RESPONDENT.	DOCKET NO. W-04254A-11-0323
IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF A RATE INCREASE.	DOCKET NO. W-04254A-08-0361
IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF A FINANCING APPLICATION.	DOCKET NO. W-04254A-08-0362 DECISION NO. **74504** **OPINION AND ORDER**

DATES OF HEARING:	February 7 and May 3, 2013 (Public Comment); June 14, 2013 (Prehearing Conference); June 20, 21, 24, 25, and 26, 2013
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Sarah N. Harpring
APPEARANCES:	Mr. Todd C. Wiley, FENNEMORE CRAIG, P.C., Mr. Douglas C. Fitzpatrick, LAW OFFICE OF DOUGLAS C. FITZPATRICK, and Ms. Patricia Olsen, owner, on behalf of Montezuma Rimrock Water Company, LLC;[1] Mr. John E. Dougherty, III, Pro Se; Ms. Michelle Wood, on behalf of the RESIDENTIAL UTILITY CONSUMER OFFICE;[2] Mr. John E. Hestand, OFFICE OF THE ATTORNEY GENERAL, on behalf of the Arizona Department of Environmental Quality;[3] and Mr. Charles O. Hains and Mr. Wesley C. Van Cleve, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

[1] Montezuma Rimrock Water Company, LLC was initially represented by Ms. Patricia Olsen, its owner; was subsequently represented by Mr. Fitzpatrick as counsel; and was ultimately represented by Mr. Wiley as counsel. Mr. Wiley replaced Mr. Fitzpatrick in March 2012, and Mr. Fitzpatrick was then permitted to withdraw as counsel.

[2] RUCO participated very briefly as an intervenor before withdrawing.

[3] Mr. Hestand appeared as counsel for ADEQ; an ADEQ employee was subpoenaed to serve as a witness for Mr. Dougherty.

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BY THE COMMISSION:

This case concerns seven dockets involving Montezuma Rimrock Water Company, LLC ("Montezuma"), a Class D water utility providing service in Yavapai County, and John Dougherty, III ("Mr. Dougherty"), an owner of residential property located within Montezuma's service area and within close proximity of the site for Montezuma's Well No. 4. This case began with Montezuma's request for the Commission to modify, under A.R.S. § 40-252, the financing authority granted in Decision No. 71317 (October 30, 2009),[4] in which Montezuma's current rates and charges were also established. The case has since expanded to include a formal complaint against Montezuma filed by Mr. Dougherty, a permanent rate application filed by Montezuma as required by Decision No. 71317, three separately filed financing applications filed by Montezuma, and three additional financing applications filed by Montezuma as a supplement to its rate application nearly a year after its rate application had been filed. Mr. Dougherty has been granted intervention in each of the non-complaint matters. All of the dockets have been consolidated for resolution in this Decision.

DISCUSSION

I. Background

A. The Dockets

Docket No. W-04254A-08-0361 and W-04254A-08-0362 (jointly the "40-252 Docket") is the consolidated docket in which Decision No. 71317 was issued, approving Montezuma's current rates and charges and granting Montezuma authority to obtain a loan of up to $165,000 from the Water Infrastructure Finance Authority of Arizona ("WIFA") for purposes of completing an arsenic treatment project. (*See* Decision No. 71317.) Decision No. 71317 was Montezuma's first rate case. The Commission has reopened the 40-252 Docket at Montezuma's request, pursuant to A.R.S. § 40-252, for the purpose of determining whether to modify Decision No. 71317 concerning financing approval and related provisions.

Docket No. W-04254A-11-0323 ("Complaint Docket") is the docket in which Mr. Dougherty has filed a formal complaint against Montezuma under A.R.S. § 40-246.

[4] Official notice is taken of this Decision.

Docket No. W-04254A-12-0204 ("Rask Docket") is the docket in which Montezuma has requested approval of financing in the form of a loan agreement in which Montezuma promised to pay Rask Construction the sum of $68,592, with interest from May 1, 2012, at a rate of 6 percent per year, for installation of a water line from Well No. 4 to Well No. 1.

Docket No. W-04254A-12-0205 ("Olsen Docket") is the docket in which Montezuma has requested approval of financing in the form of a loan agreement in which Montezuma promised to pay its owner, Patricia D. Olsen, the sum of $21,377, with interest from August 30, 2011, at a rate of 6 percent per year, for the purchase of the Well No. 4 site and a company vehicle.

Docket No. W-04254A-12-0206 ("Arias Docket") is the docket in which Montezuma has requested approval of financing in the form of a loan agreement in which Montezuma promised to pay Sergei Arias, Ms. Olsen's son, the sum of $15,000, with interest from July 1, 2011, at a rate of 6 percent per year, for the purchase of an 8,000-gallon hydro-pneumatic tank to provide additional water storage to the system.

Docket No. W-04254A-12-0207 ("Rate Docket") is the docket in which Montezuma has filed a rate application using a 2011 test year ("TY"), to comply with a filing deadline imposed by Decision No. 71317.

On July 24, 2012, a Procedural Order was issued consolidating the Rask Docket, the Olsen Docket, the Arias Docket, and the Rate Docket ("Consolidated R&F Docket").

On February 26, 2013, a Procedural Order was issued consolidating for all purposes going forward the Consolidated R&F Docket, the Complaint Docket, and the 40-252 Docket (collectively referred to as "this matter").

On April 12, 2013, nearly a year after its rate application was filed, Montezuma filed, for consideration with its rate application, three separate Financing Applications: (1) an application requesting approval of a 20-year WIFA Loan, with a principal amount of $108,000, to be used to purchase and install four 20,000-gallon storage tanks; (2) an application requesting retroactive approval of a 3-year lease with Nile River Leasing, L.L.C. ("Nile River"), with a principal amount of $8,000, through which Montezuma obtained the building housing its arsenic treatment system; and (3) an application requesting retroactive approval of a 5-year lease with Financial Pacific Leasing,

LLC ("Financial Pacific"), with a principal amount of $38,000, through which Montezuma obtained its arsenic treatment system. *(See* Ex. A-22.)

B. The Parties

Montezuma is an Arizona limited liability company, wholly owned by Ms. Olsen, and is a Class D water utility providing service to approximately 205 metered connections in a service area approximately 3/8 of a square mile in size located in the vicinity of Rimrock, Arizona, in Yavapai County. (Ex. S-1.) Most of Montezuma's customers are residential. (Ex. A-2 at 3.)

Until 2005, Montezuma's water system was owned by the non-profit Montezuma Estates Property Owners Association ("MEPOA"), which was managed by Ms. Olsen's father as MEPOA President. (Decision No. 67583 (February 15, 2005).[5]) MEPOA's water system, installed by Ned Warren as developer, had major service issues, including regular service outages and excessive water loss.[6] (Tr. at 696-97.) In Decision No. 67583, the Commission approved the sale of MEPOA's utility assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to Montezuma, although the Commission's Utilities Division ("Staff") had recommended denial and expressed the belief that MEPOA's utility assets should instead be acquired by Arizona Water Company ("AWC"), which operates a nearby system. (*See* Decision No. 67583 at 7.) Although AWC may have expressed interest in purchasing MEPOA's water system assets before the system was purchased by Montezuma, AWC did not take any action to purchase the system or to prevent its sale to Montezuma. (*See id.* at 5, 6.) In its Decision, because Montezuma had not previously been involved in the operation of a public utility, and for the purpose of ensuring that Montezuma would meet its obligations under the CC&N, the Commission required Montezuma to procure a performance or surety bond in the amount of $30,000, to maintain the bond, and to file copies of the bond annually with the Commission on the effective date of the Decision and until further order of the Commission. (*See id.* at 8-10.) At the time Montezuma acquired the system from MEPOA, Ms. Olsen (then known as Patricia Arias) had been serving as its certified operator for at least 2.5 years. (*Id.* at 3.) Ms. Olsen's resume shows that she has served as the water system's Manager/Owner-

[5] Official notice is taken of this Decision.

[6] Staff's engineering witness asserted that "Ned Warren systems" were not properly designed, installed, or maintained. (Tr. at 747.)

President/Operator since July 2001.[7] (Ex. A-1.) Ms. Olsen holds several Arizona Department of Environmental Quality ("ADEQ") certifications[8] and was employed by ADEQ at the time she acquired the CC&N and system for Montezuma. (*See* Ex. A-1.)

John E. Dougherty, III, owns a home within Montezuma's service area, but is not a Montezuma customer. (*See* Tr. at 763.) Mr. Dougherty's property is served by a private well, which previously has had some problems providing an adequate supply of water for the property.[9] (*See* Tr. at 763; Ex. A-26.) Mr. Dougherty has a long history in journalism and is currently Owner/Editor of InvestigativeMedia, LLC, in which capacity he works as an investigative journalist for various clients such as *The New York Times*, *The Arizona Republic*, and *Phoenix New Times*. (*See* Tr. at 758; Ex. C-101.)

There is no history of any relationship or interactions between Mr. Dougherty and either Montezuma or Ms. Olsen (or members of her family) prior to October 2009 when Mr. Dougherty observed that Well No. 4 had been installed on a residential property located across from his home in Rimrock. (*See, e.g.,* Tr. at 638, 856.)

C. System Generally

Montezuma's active system consists of Well No. 1, with a pump yield of 55 gallons per minute ("GPM"); a centralized 150 GPM arsenic treatment system (discussed extensively below); three storage tanks with a combined capacity of 25,200 gallons; two booster systems; and a distribution system that was serving 210 service connections at the end of 2011. (Ex. S-1 at att. A at 5, 6.) According to Staff, Montezuma does not have sufficient storage capacity to serve its present customer base and would need total storage capacity of 87,500 gallons to adequately serve 210 service connections, while accommodating reasonable system growth and fire protection. (Ex. S-1 at att. A at 12.) Montezuma's two 10,000-gallon storage tanks are leaking at their bases and have been

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[7] Although Ms. Olsen had been actively involved in running the water system for MEPOA for several years when she acquired the system as Montezuma, Montezuma has reported to Staff that the documentation for plant additions made from 2001 through 2005 are unavailable because MEPOA did not transfer the records to Montezuma at the time of acquisition. (*See* Decision No. 71317 at 7.)

[8] Ms. Olsen reported that she holds ADEQ certification for Grade 3 Water Treatment Plant Operations, Grade 3 Wastewater Treatment Plant Operations, Grade 2 Water Distribution, and Grade 2 Wastewater Collections. (Ex. A-1.)

[9] Mr. Dougherty reported that the well's production problem was caused by irrigation system valves that did not close after the system timer went off and that the problem has been resolved by discontinuing use of that system. (Tr. at 763.)

repaired on multiple occasions. (Ex. S-1 at att. A at 8.) Ms. Olsen reported that one of the tanks cannot be fully repaired because of its fragility. (*See* Tr. at 73-74.)

Montezuma is not located in an Arizona Department of Water Resources ("ADWR") Active Management Area. (Ex. S-1 at att. A at 15.) In November 2012, ADWR reported that Montezuma was in compliance with ADWR's requirements governing water providers and/or community water systems. (*Id.*) Montezuma does not have any Best Management Practice tariffs in place. (*Id.*)

Montezuma has an approved curtailment tariff that became effective in April 2002 and an approved backflow prevention tariff that became effective in November 1996. (Ex. S-1 at att. A at 19.) Montezuma also has an approved Off-Site Facilities and Original Main Replacement Hook-Up Fee Tariff that became effective in December 1996 and was revised in April 2002. (*Id.*)

During the 2011 TY, Montezuma's water system had water loss of 5.9 percent, which is within the Commission's standard for water loss to be less than 10 percent. (Ex. S-1 at att. A at 12.)

Staff's Consumer Services Section reported that between January 1, 2010, and June 25, 2013, four service-related complaints were received concerning Montezuma, and 10 opinions were received opposing the proposed rate increase. (Ex. S-1 at 6.) Staff reported that all of the service-related complaints had been resolved and closed. (*Id.*) One of the complaints involved an assertion by a customer that his water service had been disconnected without Montezuma's having sent a disconnect notice.[10] (Ex. S-3.) Staff closed the complaint after Montezuma reported that the customer had a history of late payments and nonsufficient payments and that Montezuma had sent the customer an account delinquency and disconnect notice. (*Id.*)

D. Arsenic Treatment System

Montezuma's water supply has excessive arsenic levels,[11] with its active Well No. 1 producing untreated water with an arsenic level of 35 ppb and its inactive Well No. 2 producing untreated water with an arsenic level of 43 ppb.[12] (Ex. S-1 at att. A at 5.) Even the water produced by Montezuma's unused Well No. 4, with an arsenic concentration of 16 ppb, exceeds the current

[10] The customer is reportedly a friend of Mr. Dougherty's. (*See* Tr. at 285.)

[11] The maximum contaminant level ("MCL") for arsenic was reduced from 50 parts per billion ("ppb") to 10 ppb in January 2006. (*See* Decision No. 67583 at 7.)

[12] Well No. 2 was taken out of service due both to its excessive arsenic level and its low pump yield. (Ex. S-1 at att. A at 11.)

arsenic MCL. (Decision No. 71317 at 5.) When Montezuma acquired the system from MEPOA in 2005, Montezuma intended to remediate the arsenic levels using reverse-osmosis point-of-use treatment, at a projected cost of approximately $50,000. (Decision No. 67583 at 7.) Montezuma had approximately 120 customers at the time. (*Id.* at 3.)

By July 2008, when Montezuma filed the rate application and financing application that resulted in Decision No. 71317, Montezuma had not yet remediated its arsenic levels and was requesting approval to obtain a rate increase and a $150,000 WIFA loan[13] to enable it to obtain and integrate an arsenic treatment plant into its system. (*See* Decision No. 71317 at 2.) While that rate/financing case was pending, Montezuma completed construction of a new Well No. 4, which was not yet approved for operation. (Decision No. 71317 at 5-6.) Montezuma planned to interconnect Well No. 4 to Well No. 1 with 2,500 feet of transmission main and to construct a 160 GPM arsenic treatment system to treat the combined water from Well No. 1 and Well No. 4. (*Id.*)

In December 2008, ADEQ issued a Notice of Violation ("NOV") to Montezuma for distributing water with arsenic content exceeding the MCL and required Montezuma to submit documentation to ADEQ describing the measures to be taken to remediate the arsenic. (Decision No. 71317 at 5; Ex. C-96.) Montezuma's NOV was one of 68 NOVs issued for arsenic noncompliance at that time. (Tr. at 462.) Montezuma responded to ADEQ by reporting that it was working with WIFA and the Commission to obtain approval for financing to construct arsenic treatment facilities. (Decision No. 71317 at 5.)

On October 21, 2009, ADEQ issued Montezuma a voluntary Consent Order, which Ms. Olsen was unwilling to sign because she did not want Montezuma to be required to provide an alternate water source. (Tr. at 467, 473; Ex. C-99.)

On October 30, 2009, the Commission issued Decision No. 71317, authorizing Montezuma's current rates and charges; authorizing Montezuma to obtain a $165,000 WIFA loan for the purpose of building an arsenic treatment facility and a water line between Montezuma's Well No. 1 and the new Well No. 4; and authorizing Montezuma to submit an application to implement an arsenic

[13] The request was subsequently increased to $165,000. (Decision No. 71317 at 3.)

remediation surcharge mechanism ("ARSM") to be used to pay for the WIFA loan. The Decision required Montezuma to file an ADEQ Certificate of Approval of Construction ("AOC") for Well No. 4 by December 31, 2009; to file an AOC for the arsenic treatment project by April 30, 2010; to file a permanent rate application using a 2011 test year by May 31, 2012; and to file the executed WIFA loan documents and the ARSM application within 60 days after executing the WIFA loan documents.

On November 12, 2009, ADEQ issued Montezuma a letter requesting that the Consent Order be signed within 10 days and stating that it would be escalated to a unilateral Compliance Order if not signed. (Tr. at 468, 473-74; Ex. C-99.)

On November 30, 2009, Ms. Olsen e-mailed a letter to Henry Darwin, ADEQ Director, stating that Montezuma was regulated by the Commission and unable to incur long-term debt without Commission approval; stating that Montezuma needed to wait until December 16, 2009, for WIFA approval; and asserting that ADEQ was not providing Montezuma a "level playing field" regarding arsenic MCL compliance because Montezuma could "find no evidence of aggressive action" toward other referenced water utilities, including two public service corporations and one municipality. (Ex. C-45.) Additionally, Ms. Olsen accused ADEQ employee Vivian Burns of making "off the cuff, unprofessional and derogatory comments" to Ms. Olsen by stating "You must be sleeping with the guys over at the Arizona Corporation Commission for them to be so helpful to you." (*Id.*) Montezuma requested that its deadline to install and operate its arsenic treatment system be extended to May 30, 2009;[14] that the requirement for it to provide alternate drinking water to its customers be removed; and that it receive "an apology from ADEQ for the insulting comment made by ADEQ staff." (*Id.*) At hearing, Ms. Burns denied that she had made the alleged statement to Ms. Olsen and said that the allegation had caught her by surprise because she thought that she and Ms. Olsen had always had a good relationship and "just didn't understand where it was coming from."[15] (Tr. at 469-70.) Ms. Burns also testified that although the allegation did not cause her problems at work because she has a good reputation in her office for being professional and fair, she was questioned about it by

[14] Although the letter requested an extension until May 30, 2009, this appears to have been a typographical error.

[15] Ms. Olsen and Ms. Burns had had a good relationship prior to that time, with Ms. Olsen effusively praising Ms. Burns in a March 26, 2009, email. (*See* Ex. C-97; Tr. at 463-66.)

both her manager and the Deputy Director of the Water Division. (Tr. at 469-71.) As far as Ms. Burns is aware, ADEQ never made any apology to Ms. Olsen or Montezuma. (*Id.*)

Because Montezuma had not signed the Consent Order, ADEQ issued a Compliance Order on February 25, 2010, which Montezuma appealed on March 24, 2010, resulting in the scheduling of an administrative hearing. (Ex. A-11.) ADEQ and Montezuma reached settlement, however, and a Consent Order was executed as a replacement for the previous Compliance Order, with Montezuma signing on May 27, 2010, and ADEQ signing on June 7, 2010. (Tr. at 474; Ex. A-11.) The Consent Order stated:

> Not withstanding [sic] the disposition of the funding request to WIFA, within one year from the effective date of this Order, MRWC shall complete construction of the approved arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system described in Section III(B) of this Order.[16]

The Consent Order further required Montezuma to provide its customers an alternate source of water, which was accomplished by having its customers make appointments to come to Montezuma's office to obtain bottled water. (Ex. A-11 at 4-5; Tr. at 105-08.)

ADEQ issued an Approval to Construct ("ATC") for the arsenic treatment system on June 11, 2010. (*See* Ex. S-1 at att. A at 8; Ex. A-12; Ex. A-13.) The Consent Order was subsequently amended, on June 2, 2011, to extend until April 7, 2012, Montezuma's deadline to complete construction of the arsenic treatment system and submit an administratively complete application for an AOC for the treatment system. (Ex. A-12.)

On April 11, 2012, ADEQ issued Montezuma another NOV, providing Montezuma an opportunity to demonstrate to ADEQ that there was no violation, to submit the documentation needed to complete an application for an AOC, or to meet with ADEQ to discuss the NOV. (Ex. C-46.) A meeting was scheduled to be held at ADEQ on April 26, 2012, with Montezuma, ADEQ representatives, and several members of Staff to attend. (Ex. C-51.) Additionally, a pre-meeting was scheduled to be held at ADEQ on April 17, 2012, for ADEQ representatives and several members of

[16] Ex. A-11 at 4. Ms. Burns testified that this language meant that Montezuma was required to install the treatment plant in compliance with the deadline regardless of whether the Commission approved funding for the plant. (Tr. at 493.)

Staff. (*Id.*) The pre-meeting was attended by Ms. Burns, Marcia R. Colquitt, and Mindi Cross from ADEQ and by Marlin Scott, Jeffrey Michlik, and Nancy Scott from Staff. (*Id.*; Tr. at 479.) The purpose of the pre-meeting was to discuss Montezuma's compliance status and progress toward installing the arsenic treatment plant. (Tr. at 479-80.) Ms. Burns reported that no notes were taken at the pre-meeting, however, and that she was unable to recall specifics.[17] (Tr. at 479-80.) The April 26, 2012, meeting also took place at ADEQ, with Ms. Olsen[18] and the same ADEQ and Commission attendees. (Ex. C-41; Ex. C-41A.) At the meeting, it was acknowledged that Montezuma was not in compliance with the Consent Order, that ADEQ could impose penalties, that Montezuma hoped to use Well No. 4 for backwashing pending its lawsuit with Yavapai County and was already using Well No. 4 to irrigate vegetation, that ADEQ had received complaints regarding Montezuma's customer service availability and the availability of alternate water supplies for customers, and that Montezuma was moving forward with installation of the arsenic treatment plant and expected it to be completed by June 7, 2012. (*See* Ex. C-41; Ex. C-41A.) Montezuma showed the attendees a copy of a letter from the installer saying that installation could be completed by June 7, 2012, but would not provide a copy of the letter. (Ex. C-41; Ex. C-41A.) Ms. Burns seemed to believe that all attendees of the April 26, 2012, meeting understood Montezuma was moving forward with installation of an arsenic treatment facility and that the installation would be completed by June 7, 2012. (Tr. at 484-85; 494-95.) Ms. Olsen stated at the meeting that Montezuma would be able to move forward with the arsenic treatment plant installation even without using Well No. 4, which was the first time Ms. Burns had heard that. (Tr. at 511-12.)

Montezuma received an AOC[19] for the arsenic treatment system on November 21, 2012, following a partial final construction inspection conducted on July 17, 2012; water system pressure and leakage tests conducted on May 16, 2012; and microbiological sample testing on June 7 and

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[17] Ms. Burns did not believe that financing had been discussed, as ADEQ "doesn't get involved in financing." (Tr. at 481.)

[18] At the meeting, Ms. Olsen asserted that she had not received a copy of the NOV via certified mail. (Tr. at 484-85; Ex. C-41.)

[19] The AOC is described as a "Partial AOC Permit" for a 1-150 GPM arsenic treatment system and approximately 2,550 linear feet of waterlines and related fittings, authorizing Montezuma to begin operating the arsenic treatment system. (Ex. A-13.) The AOC was designated as "Partial" because it does not extend to a 30,000 gallon water storage tank that was included in the underlying ATC. (*Id.*)

October 17, 2012. (Ex. A-13; Tr. at 103-04.) The arsenic treatment system has been in operation as part of Montezuma's system since November 29, 2012, and has been effective in remediating the arsenic concentration of the water supply. (Ex. A-8; Tr. at 77-79, 104.) On December 19, 2013, ADEQ issued a Drinking Water Compliance Status Report stating that Montezuma was in full compliance with safe drinking water requirements after having submitted a full year of test results showing that its system water is in compliance with the arsenic MCL.[20]

Staff has determined that only 37 percent of the cost of the 150 GPM arsenic treatment system should be recovered through rates because the remaining 63 percent of the arsenic treatment system represents excess capacity. (Ex. S-1 at 13, 28, Sched. GWB-2, att. A at 16; Ex. S-2 at Sched. GWB-2.) Staff recommended at hearing that Montezuma be required to file with the Commission's Docket Control, as a compliance item in this docket, copies of its 2013 quarterly arsenic compliance laboratory results for Staff review and that it be required by January 31, 2014, to file an updated ADEQ Compliance Status Report indicating that the arsenic deficiencies had been resolved and that the system is in full compliance. (Ex. S-1 at att. A at 2; Tr. at 691.) At hearing, Montezuma suggested that it instead be required to file with Docket Control copies of the lab test results that Montezuma must submit to ADEQ on a quarterly basis. (Tr. at 111.)

Because Montezuma has recently submitted to the Commission documentation showing that ADEQ has determined its water to be in compliance with safe drinking water standards and its system to be in compliance, the Commission does not currently find it necessary to require additional filings related to such compliance.

E. Well No. 4

Well No. 4, ADWR Well ID No. 55-213141, is located on a residential parcel known as Lot 500 in Lake Montezuma Estates, Unit Two, which was owned by Anna Barbara Brunner until Montezuma purchased the property from Ms. Brunner in 2005 for the price of $35,000, with the intent of using the site to locate a production well. (*See* Ex. A-2 at 26; Tr. at 172.) Ms. Olsen testified that no professional appraisal was obtained before Montezuma purchased the property;

[20] Official notice is taken of the ADEQ Compliance Status Report issued on December 19, 2013, which Montezuma filed in the docket for this matter on December 27, 2013.

instead, she estimated its value based on the prices for other properties in the area and the presence of a well on the property. (*See* Tr. at 172.) Ms. Brunner had purchased the property for $7,000 in December 2001. (Ex. C-93 at att. 23.) Ms. Olsen's testimony was unclear regarding who initiated the transaction for Montezuma to purchase the property from Ms. Brunner. (*See* Tr. at 113-14.) Montezuma agreed to purchase the property from Ms. Brunner for a total of $35,000, to be paid through a down payment of $3,000 and then payments made to Ms. Brunner. (Ex. A-2 at 26.) A Warranty Deed from Ms. Brunner to Montezuma was recorded with the Yavapai County Recorder on November 16, 2005. (*Id.*) A Deed of Trust and Assignment of Rents, identifying Montezuma as Trustor and Yavapai Title Agency as Trustee, with Ms. Brunner as Beneficiary, was also recorded to secure payment of indebtedness in the principal sum of $32,000. (*Id.*; Ex. C-70.) The Deed of Trust and Assignment of Rents referenced a promissory note or notes executed by the Trustor (Montezuma) on the same date, but Ms. Olsen was unable to recall at hearing whether there was a promissory note or a schedule of payments or what the interest rate was for the debt. (Ex. C-70; Tr. at 173-74.) Ms. Olsen testified that the monthly payments made were approximately $300 and that payments were made both by Montezuma and by herself.[21] (Tr. at 174.) Ms. Olsen also testified that she did not consider the Brunner property to be an asset of Montezuma and that she had intended to pay cash for the Brunner property because she did not want to incur long-term debt, which she knew was an issue but believed to be defined as debt with a term of more than 5 years. (*See* Tr. at 114, 175.) Ms. Olsen testified that she had intended to pay off the Brunner "note" faster than she did, that she had told her former accountant that she intended to pay cash, that she had switched accountants in 2006, and that she had not told her current accountant, John Campbell, that the Brunner note needed to be included on annual reports until about 2010. (Tr. at 115-16.) Ms. Olsen agreed when asked whether the exclusion of Well No. 4 and its well site from rate base or any rate increase (i.e., their status as not used and useful) in this matter meant that any encumbrance on the Well No. 4 property resulting from the Deed of Trust with Ms. Brunner was not an encumbrance on Montezuma's property used to provide service and could not have impaired Montezuma's ability to provide service.

[21] Assuming no interest, it would take more than 106 months to pay off a $32,000 debt with payments of $300 per month.

(*See* Tr. at 115-17.) In August 2011, Ms. Olsen made out a check to the National Bank of Arizona in the amount of $16,757.89, for "Yavapai Title." (Ex. C-78.) On August 15, 2011, National Bank of Arizona, on behalf of Patricia Olsen, issued a Cashier's Check payable to Yavapai Title Agency in the amount of $16,757.89. (Ex. A-20.) Also on August 15, 2011, a Deed of Release and Full Reconveyance was executed by Yavapai Title Agency stating that Montezuma's indebtedness secured by the Deed of Trust of October 19, 2005, had been paid in full and that title to the subject property had been released and reconveyed. (Ex. A-21.) Ms. Olsen testified that the funds for the check came from her personal account. (*See* Tr. at 67-69.) Mr. Dougherty testified that Ms. Brunner is a friend of Ms. Olsen's who served on the MEPOA board at the time that MEPOA sold the water system to Montezuma. (Ex. C-92 at 14.)

Montezuma had Well No. 4 drilled, to a depth of 400 feet, in August 2006 pursuant to authority issued by ADWR for replacement of an exempt well on the residential parcel. (Ex. A-28.) Montezuma did not have an ATC from ADEQ at the time, something that Ms. Olsen testified is not an uncommon practice because of the cost associated with obtaining an ATC and the possibility that a well will not be viable.[22] (Tr. at 429-31.) At the time the well was drilled, Montezuma also did not have a use permit from Yavapai County ("County") allowing Montezuma to use the residential parcel for a commercial purpose. (Tr. at 254.) In October 2009, Mr. Dougherty observed that a six foot fence topped with triple strands of barbed wire had been installed around the entire perimeter of the parcel across from his Rimrock house and that the lot also contained an elevated platform surrounded by an earthen berm and boulders, a sight that Mr. Dougherty described as "an industrial facility in the middle of a residential neighborhood." (Tr. at 638, 834-35.) Mr. Dougherty took a closer look, found a sign for Montezuma, with which he was unfamiliar, and called the County to determine whether Montezuma had a use permit to operate a business on the lot. (Tr. at 638.) When he was told by the County that Montezuma did not have a use permit, Mr. Dougherty made a complaint. (*Id.*) As a result of this complaint, Yavapai County Development Services ("YCDS") issued a Notice of Violation for the use on October 7, 2009, and scheduled a hearing for December 11, 2009. (*Id.* at

[22] Ms. Olsen testified that it costs approximately $1,500 to obtain an ATC, as opposed to approximately $25,000 to drill a well. (Tr. at 430-31.)

638-39; Ex. C-1.)

On October 28, 2009, ADEQ issued an ATC for Well No. 4. (Ex. S-1 at att. 1 at 7.)

In December 2009, Montezuma applied to YCDS for a use permit. (*See* Ex. C-2.) The Yavapai County Planning and Zoning Commission ("Zoning Commission") deferred consideration of Montezuma's use permit request from January to February 2010 and, on February 17, 2010, recommended approval of the use permit with five stipulations. (Ex. A-17.) Meanwhile, Montezuma filed a pump installation completion report with ADWR stating that installation of a submersible pump with an electric motor had been completed in September 2008 and that the well had been tested in February to March 2009 and had produced 150 GPM. (Ex. A-28.) On March 15, 2010, the Yavapai County Board of Supervisors ("YCBOS") voted to approve Montezuma's use permit, subject to the five stipulations recommended by the Zoning Commission, which included, *inter alia*, a requirement for the site to be developed in accordance with all applicable codes, regulations, and ordinance requirements and that a Certificate of Compliance be issued within one year demonstrating that the standard had been met. (Ex. A-17.) The use permit authorized Montezuma to place on the parcel, subject to the stipulations, a well site to serve its water system. (Ex. A-17.) After the use permit was approved, Mr. Dougherty filed, in Yavapai County Superior Court, a lawsuit against YCBOS and Montezuma, charging that YCBOS had not enforced the Yavapai County Water Well Code setback requirement when it granted the use permit; Montezuma filed a counterclaim. (*See* Tr. at 134-35, 260-65; Ex. A-26; Ex. C-57.[23]) The Court determined that Montezuma's placement of Well No. 4 did not comply with the Water Well Code,[24] and on November 13, 2012, Montezuma was ordered to return the well site property to vacant land by December 20, 2012. (*See* Tr. at 261-65; Ex. S-1 at att. A at 7.) When Montezuma did not remove all of the improvements from the well site property by the Court's deadline, Mr. Dougherty brought this to the County's attention, and Montezuma was fined $10,000. (*See* Tr. 265-70; Ex. C-47.) In May 2013, the fine was reduced to

[23] Official notice is taken of the Yavapai Superior Court's Under Advisement Ruling issued on September 20, 2012, in *Dougherty v. Yavapai County Board of Supervisors*, Case No. P1300CV201000585, in which the Court found that Montezuma's legal argument in its Counterclaim and Cross-Claim for Declaratory Relief "both misinterpret[ed] and misapplie[d] ARS § 49-106." For the sake of convenience, this public document is referenced as Ex. C-57, as Mr. Dougherty labeled it as such but did not use or offer it at hearing.

[24] Ms. Olsen maintains that the placement of the well complied with an exception in the Water Well Code. (Tr. at 263-65.)

$5,000 after Montezuma had removed concrete pads from the well site. (*See* Tr. at 265-70; Ex. C-47.)

At the time of the hearing in this matter, Montezuma did not have legal authority to operate Well No. 4 for its system, and Well No. 4 was not in use. (*See, e.g.*, Tr. at 116.) Although Montezuma previously had indicated that it would be pursuing condemnation to obtain the setback needed to comply with the Water Well Code, Ms. Olsen testified at hearing that Montezuma was in the process of obtaining an easement from the owners of the parcel for which setback requirements had been determined not to have been met. (*See* Ex. A-2 at 27; Tr. at 118-19.) With its closing brief, filed on August 30, 2013, Montezuma included a copy of an Easement Agreement dated July 23, 2013, granting Montezuma "a perpetual, nine (9) foot wide non-exclusive easement . . . for purposes of obtaining a fifty (50) foot setback from the installation, construction, maintenance, operation, use, repair and replacement of a water well on the Montezuma Property."[25] No additional information has been provided to indicate that Montezuma has been authorized to use the well site property or to use Well No. 4 in its operations.

Ms. Olsen asserts that Montezuma and its customers would benefit from the operation of Well No. 4 because Montezuma has no back-up wells on its system. (Ex. A-2 at 28.) Ms. Olsen testified that Montezuma's Well No. 1 has been in operation since the system was created and "has had no maintenance or improvements to ensure its continued operation." (*Id.*) Ms. Olsen also asserted that Montezuma's customers would be benefited by Well No. 4 because it could provide an ample water supply for fire protection. (*Id.*)

Staff determined that Well No. 4 is not currently used or useful and did not include it in plant for purposes of setting rates in this matter. (Tr. at 703-04, 713.) Mr. Scott testified that although adding Well No. 4 could result in excess capacity for Montezuma, Staff always considers it beneficial to have a second well. (Tr. at 710-12.) Mr. Scott also testified that he has seen ATCs obtained before drilling and after drilling and did not see anything wrong with what Montezuma did in this

[25] Official notice is taken of this Easement Agreement, which is a public record filed in the Official Records of Yavapai County on July 30, 2013, and available through the Yavapai County Recorder's website.

case regarding Well No. 4. (Tr. at 692.) Mr. Scott was uncertain whether ADEQ actually requires an ATC to be obtained before a well is drilled. (Tr. at 734-35.)

Mr. Dougherty strenuously objects to having Montezuma use Well No. 4 for its system because he believes the commercial use is incompatible with the residential locale, because he is concerned that Well No. 4 may adversely impact his own and other private wells, because he is concerned that Well No. 4 may adversely impact Montezuma Well and Wet Beaver Creek, and because Montezuma drilled the well and attempted to place the well into service for the water system without first having obtained all state and county permissions and after having allegedly provided inaccurate information to county and state authorities. (*See, e.g.,* Tr. at 832-39.)

II. Procedural History

On December 11, 2009, in the 40-252 Docket, Montezuma filed a request to extend the filing deadline for the AOC for Well No. 4 from December 31, 2009, to June 30, 2010.

On February 3, 2010, in the 40-252 Docket, Staff issued a Memorandum recommending that the Well No. 4 AOC filing deadline be extended as requested by Montezuma, to June 30, 2010.

On February 11, 2010, in the 40-252 Docket, a Recommended Order was issued, which would have extended the Well No. 4 AOC filing deadline to June 30, 2010, as requested by Montezuma and recommended by Staff. The Recommended Order was issued for consideration by the Commission at its regular Open Meeting on March 2 and 3, 2010.

On February 19, 2010, in the 40-252 Docket, Mr. Dougherty, who had not previously participated in the 40-252 Docket, filed an "exception" to the Recommended Order. Mr. Dougherty asserted that WIFA had suspended the loan to Montezuma due to concerns about Well No. 4's possibly causing environmental impacts on Montezuma Well National Monument and Wet Beaver Creek; that WIFA was requiring Montezuma to submit an Environmental Information Document ("EID") and additional information under the National Environmental Policy Act ("NEPA"); that Montezuma had been cited by YCDS in October 2009 for operating a commercial business (Well No. 4) in a residentially zoned neighborhood and had been forced to file for a use permit for the Well No. 4 well site; that the Planning and Zoning Commission had recommended approval of the use permit; that the YCBOS was to consider the issue in mid-March 2010; that Montezuma was out of

compliance with drinking water standards; and that ADEQ had presented Montezuma with a Consent Order, which Montezuma had rejected. Mr. Dougherty attributed Montezuma's situation to "poor management decisions," requested that the Commission reject Montezuma's requested extension, and advocated for Montezuma's service area to be absorbed by AWC.

On February 26, 2010, in the 40-252 Docket, Steven M. Olea, Director of the Utilities Division, issued a letter to Montezuma stating that Staff understood Montezuma was out of compliance with the arsenic MCL; that Staff was concerned about this noncompliance; and that Montezuma needed to submit to Staff, within 60 days, a detailed plan to address and resolve Montezuma's noncompliance. The letter further stated that Montezuma's failure to submit such a plan would result in referral to the Commission's Legal Division for possible enforcement action.

On March 2, 2010, at the Commission's regular Open Meeting, Mr. Dougherty provided public comment opposing the Recommended Order issued in the 40-252 Docket. The Commission did not approve the Recommended Order.

On March 30, 2010, in the 40-252 Docket, Montezuma submitted to Mr. Olea a letter setting forth the steps already taken by Montezuma and those then underway to bring Montezuma into compliance with ADEQ requirements. With its letter, Montezuma included attachments, among them a copy of a letter from the YCBOS reporting that the YCBOS had, on March 15, 2010, voted to approve Montezuma's use permit for the Well No. 4 wellsite. The letter, with attachments, was docketed in the 40-252 Docket on April 5, 2010.

On April 13, 2010, someone docketed in the 40-252 Docket a copy of a Complaint filed against the YCBOS by Mr. Dougherty and Frederick Shute in Yavapai County Superior Court, challenging the YCBOS's approval of Montezuma's use permit as unsupported by evidence, contrary to law, arbitrary, capricious, and/or an abuse of discretion and seeking reversal of the YCBOS's decision ("Yavapai County lawsuit").

On October 1, 2010, someone docketed in the 40-252 Docket a copy of "White Paper #1: Wells and Water Use Near Montezuma Well Nat'l Monument," by Robin G. Weesner, R.G., dated April 6, 2010.

On January 24, 2011, in the 40-252 Docket, Montezuma filed a request, under A.R.S. § 40-252, to have Decision No. 71317 amended to allow Montezuma to seek funding for its arsenic treatment project from a private financial institution rather than WIFA, so that Montezuma would be able to complete its arsenic treatment facility by June 2011. Montezuma stated that WIFA had decided to require an Environmental Impact Statement ("EIS") for the WIFA loan and that the EIS would take one to two years to complete at a cost of more than $100,000.

On February 10, 2011, in the 40-252 Docket, Staff filed a Memorandum providing an update on Montezuma's situation. Staff reported that Montezuma had provided an EID to WIFA; that WIFA had had the EID reviewed by a consultant, AZTEC Engineering, and the EPA; that AZTEC Engineering and the EPA had both reviewed the EID and both recommended that WIFA consider an EIS; and that WIFA had notified Montezuma on November 22, 2010, that an EIS would be required for Montezuma to receive WIFA funding for its arsenic treatment project. Staff stated that Montezuma thus had needed to choose whether to continue pursuing the WIFA loan, with the substantial EIS expense, or instead to request modification of Decision No. 71317 to allow for alternate financing. Staff stated that Montezuma had decided to request modification of Decision No. 71317 pursuant to A.R.S. § 40-252. Staff also stated that Staff was not recommending that any action be taken against Montezuma because Montezuma had been cooperating with state agencies and was "seriously attempting to fulfill its arsenic treatment mandate to comply with ADEQ and the Commission."

On March 14, 2011, in the 40-252 Docket, Mr. Dougherty filed written opposition to Montezuma's request for amendment of Decision No. 71317 under A.R.S. § 40-252. Mr. Dougherty characterized Montezuma's request as "seek[ing] a blank check" and advocated for the Commission to schedule an Order to Show Cause ("OSC") Hearing to consider revoking Montezuma's CC&N. Mr. Dougherty asserted that Montezuma had unlawfully connected Well No. 4 to its system and included a copy of a letter emailed by him to ADEQ in which he had made that assertion and provided photographs of what he had observed.

On April 7, 2011, in the 40-252 Docket, Mr. Dougherty filed a letter requesting to be included on the service list for the 40-252 Docket and providing several documents in support of his March 14,

2011, filing, including copies of a letter to WIFA from AZTEC Engineering regarding the EIS, a letter to WIFA from the National Park Service regarding the EID, and a letter to Montezuma from the Arizona Game and Fish Department regarding biological issues for Well No. 4.

Between April 22 and 26, 2011, comments were filed in the 40-252 Docket by five individuals identifying themselves as customers of Montezuma, all of whom expressed support for arsenic treatment.

On April 27, 2011, at its Staff Open Meeting, the Commission granted Montezuma's request for Decision No. 71317 to be reopened under A.R.S. § 40-252, for the purpose of determining whether to modify the Decision concerning financing approval and related provisions. The Commission directed the Hearing Division to schedule a procedural conference to discuss the process for the 40-252 proceeding. Montezuma attended the Staff Open Meeting via telephone, and Mr. Dougherty attended in person.

On April 27, 2011, in the 40-252 Docket, someone filed a stream of emails from Mr. Dougherty to Staff and Commission employees in which Mr. Dougherty asserted that Montezuma had been illegally collecting arsenic surcharges and that the Commission needed to take action by issuing a cease and desist order to stop Montezuma's construction of a pipeline between Well No. 4 and the proposed location for the arsenic treatment facility.

On April 28, 2011, a Procedural Order was issued in the 40-252 Docket scheduling a procedural conference to be held on May 16, 2011. The Procedural Order included standard language indicating that any motion not ruled upon by the Commission within 20 days would be deemed denied.

On May 10, 2011, in the 40-252 Docket, Montezuma filed a letter alleging harassment of Montezuma and its owner by Mr. Dougherty and Ivo Buddeke. Montezuma asserted that installation of the arsenic treatment system had been suspended due to "Buddeke and Dougherty's allegations and harassment." Montezuma included a copy of a "Declaration of Patricia Olsen" filed in the Yavapai County lawsuit, with attachments. The Declaration indicated that Montezuma had been added to the Yavapai County lawsuit as a party defendant.

On May 16, 2011, in the 40-252 Docket, a procedural conference was held at which Montezuma stated that it had applied for a bank loan, Staff stated that there was not yet enough information to complete a Staff Report, and it was determined that a Procedural Order would be issued with filing dates.

On May 16, 2011, in the 40-252 Docket, a Procedural Order was issued requiring Montezuma, by June 16, 2011, to file an update providing the status and details of its bank loan application along with an alternate plan for financing in case the loan was disapproved; requiring Staff to file a Memorandum analyzing Montezuma's update; and requiring any Motions to Intervene to be filed by June 16, 2011.

On June 9, 2011, Mr. Dougherty filed a Motion to Intervene in the 40-252 Docket, stating that he owned property within 300 feet of Well No. 4 and was served by a private well.

On June 14, 2011, Mr. Dougherty filed an amendment to his Motion to Intervene in the 40-252 Docket, expressly requesting that a hearing be held.

On June 15, 2011, in the 40-252 Docket, Montezuma docketed a letter from Sunwest Bank denying Montezuma a $165,000 loan and stating that Montezuma would need a revenue increase of $37,536 to support the loan.

No filing was made to oppose Mr. Dougherty's Motion to Intervene in the 40-252 Docket.

On June 29, 2011, a Procedural Order was issued scheduling a procedural conference in the 40-252 Docket for July 22, 2011; suspending Staff's filing obligation; and granting Mr. Dougherty intervention.

On July 20, 2011, in the 40-252 Docket, Mr. Dougherty filed a Motion requesting that Commission Staff prepare an OSC hearing to revoke Montezuma's CC&N.

On July 21, 2011, in the 40-252 Docket, a Notice of Appearance was filed by Douglas C. Fitzpatrick as counsel for Montezuma.

On July 22, 2011, Commissioner Paul Newman filed a Memorandum in the 40-252 Docket urging that an evidentiary hearing be ordered due to the Federal-Native American nexus in the case.

On July 22, 2011, a procedural conference was held in the 40-252 Docket. At the beginning of the procedural conference, Mr. Dougherty was prevented from coming to the hearing room by the

Commission's security guard, to whom Ms. Olsen had provided a copy of a July 18, 2011, Verde Valley Justice Court Injunction Against Harassment ("Injunction"), stating that Mr. Dougherty could have no contact with Ms. Olsen except through attorneys, legal process, and court hearings. The Injunction also stated that it did not prohibit Mr. Dougherty from attending public meetings. The Injunction had not been docketed or provided to Staff or the Administrative Law Judge. A brief recess was held for copies of the Injunction to be provided and reviewed and for Mr. Dougherty to enter a separate room, equipped with a monitor and telephone, so that he could watch, hear, and participate in the proceeding from another room while the impact of the Injunction was discussed. After the recess, counsel for Montezuma and Ms. Olsen both stated on the record that Mr. Dougherty's attendance and participation at the procedural conference would not violate the Injunction, as the procedural conference was a public meeting. Mr. Dougherty was then permitted to enter the hearing room to participate in the remainder of the procedural conference in person. Montezuma reported that it was still pursuing a bank loan and, additionally, that it planned to file an emergency rate application if that loan were denied. Montezuma also reported that ADEQ had extended its arsenic MCL compliance deadline to April 2012. Mr. Dougherty advocated for a hearing and an OSC. Staff stated that there was no plan to initiate an OSC and that Staff would be filing copies of a letter Staff had sent to Montezuma directing Montezuma to cease collecting an unauthorized arsenic surcharge. Staff also suggested that Mr. Dougherty's issues might be better addressed through a formal complaint, and Mr. Dougherty was provided the statutory citation for formal complaints. It was determined that Montezuma would be given another 60 days to file its plan for financing the arsenic treatment project.

On July 25, 2011, in the 40-252 Docket, Staff filed a copy of an informal complaint report generated by Staff's Consumer Services Section regarding Montezuma's having charged customers an unauthorized arsenic surcharge.

On July 25, 2011, a redacted copy of the Injunction was docketed in the 40-252 Docket by the Hearing Division.

On July 25, 2011, a Procedural Order was issued in the 40-252 Docket requiring Staff to file a copy of the letter sent to Montezuma regarding unauthorized arsenic surcharges; requiring

Montezuma to file, by September 22, 2011, either an explanation of and documentation for its financing of the arsenic treatment facilities or an explanation of how Montezuma would remedy its arsenic MCL exceedance if it could not obtain financing; requiring Staff to make a filing, by September 30, 2011, regarding whether Montezuma had provided sufficient information for Staff to make a substantive recommendation regarding modification of Decision No. 71317 and proposing a procedural schedule; and requiring Montezuma and Mr. Dougherty each, by October 7, 2011, to make a filing responsive to Staff's filing.

On August 23, 2011, in the 40-252 Docket, Mr. Dougherty filed a Motion to Compel Montezuma to produce records requested in Mr. Dougherty's First Set of Data Requests.

Also on August 23, 2011, Mr. Dougherty and Nicholas Kopko filed, in a new Docket No. W-04254A-11-0323 ("Complaint Docket"), a Formal Complaint against Montezuma, including 14 allegations and supporting attachments.

On August 24, 2011, in the 40-252 Docket, a Procedural Order was issued finding that Mr. Dougherty's Motion to Compel had been insufficient as filed, ordering Mr. Dougherty to engage in personal consultation with counsel for Montezuma and to make good faith efforts to resolve the current and any other discovery dispute before filing another Motion to Compel, and ordering Montezuma to respond fully and candidly to each discovery request received by it.

On August 31, 2011, in the 40-252 Docket, Mr. Dougherty filed a Notice of Filing Formal Complaint against Montezuma and Motion to Stay, requesting that the Commission stay all proceedings under the 40-252 Docket until the allegations raised in the Complaint Docket had been fully answered by Montezuma.

On August 31, 2011, in the Complaint Docket, Mr. Dougherty filed additional exhibits.

On August 31, 2011, a Procedural Order was issued in the 40-252 Docket, the Emergency Rate Docket,[26] and the Complaint Docket scheduling a joint procedural conference to be held on September 13, 2011.

[26] Montezuma had filed an Emergency Rate Application, in a new Docket No. W-04254A-11-0296 ("Emergency Rate Docket"), on July 25, 2011. On September 29, 2011, Montezuma filed a Motion to Withdraw Application in the Emergency Rate Docket, stating that it had found a way to comply with the arsenic standard without the expense of constructing arsenic treatment facilities. On October 12, 2011, a Procedural Order was issued granting Montezuma's

On September 9, 2011, in the Complaint Docket, Mr. Kopko filed a Notice of Withdrawal.

On September 13, 2011, the joint procedural conference was held as scheduled for the 40-252 Docket, the Emergency Rate Docket, and the Complaint Docket. Staff explained that it had been mistaken and that no letter had been sent to Montezuma regarding unauthorized arsenic surcharges. Montezuma and Staff both opposed Mr. Dougherty's Motion to Stay in the 40-252 Docket. Montezuma acknowledged having received the Complaint on September 9, 2011. Montezuma and Mr. Dougherty's discovery dispute was discussed, a recess was taken for them to discuss their discovery dispute off the record, and they reached an agreement for Mr. Dougherty to review and make copies of Montezuma's records at the office of Montezuma's counsel on September 19, 2011. Montezuma also stated for the first time that its premises had been burglarized on three separate occasions, with records removed each time, and that its computer system had been hacked on two separate occasions, rendering some billing records unavailable. Montezuma admitted that it had never filed a police report. The possibility of consolidating the 40-252 Docket, the Emergency Rate Docket, and the Complaint Docket was discussed, with no party supporting consolidation. No ruling was made on Mr. Dougherty's Motion to Stay in the 40-252 Docket.

On September 13, 2011, in the Complaint Docket, Mr. Dougherty filed a Motion to Modify Formal Complaint with Additional Allegation and Two Additional Remedies; Notice of Submission of Two Exhibits. The additional allegation was Allegation XV.

On September 14, 2011, in the 40-252 Docket, a Procedural Order was issued denying Mr. Dougherty's Motion to Stay.

On September 14, 2011, in the Complaint Docket, a Procedural Order was issued granting amendment of the Complaint to include Allegation XV, directing Montezuma to answer the Complaint as amended, and accepting Mr. Kopko's withdrawal and directing that he be deleted from the caption for the Complaint Docket.

Motion to Withdraw Application and closing the Emergency Rate Docket. The Emergency Rate Docket is not at issue in this matter.

On September 19, 2011, in the Emergency Rate Docket, the U.S. Department of the Interior's National Park Service ("National Park Service") filed a letter to the Commission expressing concerns about Well No. 4 and requesting that a hearing be held.

On September 19, 2011, in the 40-252 Docket, Montezuma filed a Report in response to the August 24, 2011, Procedural Order, to detail how it proposed to finance construction of an arsenic treatment facility. The proposal included costs of $165,000; a $165,000 loan from Sunwest Bank; a rate increase of $15.64 per customer per month to increase revenues by $37,536; a security interest granted to Sunwest Bank; a trust account to segregate the loan funds and ARSM surcharge funds; and periodic accountings to the Commission regarding the trust account.

On September 26, 2011, in the Complaint Docket, Mr. Dougherty filed another Motion to Modify Formal Complaint, requesting to add an Allegation XVI.

On September 30, 2011, in the Complaint Docket, Montezuma filed an Answer to Complaint.

On September 30, 2011, in the 40-252 Docket, Mr. Dougherty filed a Motion for Evidentiary Hearing.

On October 3, 2011, in the Complaint Docket, Mr. Dougherty filed a Motion for Evidentiary Hearing.

On October 4, 2011, a Procedural Order was issued in the 40-252 Docket requiring Montezuma to file a detailed explanation of how and when it would resolve its arsenic problem and a response to Mr. Dougherty's Motion for Hearing; requiring Staff to make a filing responding to Montezuma's filing and Mr. Dougherty's Motion for Hearing and providing a recommendation for the process to be followed; and vacating the requirements for filings to have been made pursuant to the Procedural Order of July 25, 2011.

On October 6, 2011, in the 40-252 Docket, Montezuma filed a Response to Mr. Dougherty's Motion for Hearing, stating that no hearing was needed and that Montezuma no longer needed to fund construction of an arsenic treatment facility because Montezuma was instead working to formalize a lease of arsenic treatment equipment. Montezuma stated that the details of the lease were not yet available but would be provided when they became available.

On October 12, 2011, Montezuma filed in the 40-252 Docket a Proposed Plan for Arsenic Abatement, stating that Montezuma would be leasing arsenic treatment facilities from GEcom Water Solutions, Inc. and expected to execute the lease within two weeks and would file an executed copy of the lease thereafter.

On October 12, 2011, in the Complaint Docket, a Procedural Order was issued granting Mr. Dougherty's requested amendment of the Complaint to add Allegation XVI; scheduling a procedural conference for October 25, 2011; requiring the parties to exchange, before the procedural conference, documents and information gathered in discovery, copies of exhibits to be used, and witness lists and testimony subject areas; requiring Montezuma to provide discovery of "all of the records necessary to [give] complete and authentic information as to its properties and operations"; requiring Staff to participate fully in the matter, take a position as to each allegation in the Complaint, and state whether Staff would be issuing an OSC; and requiring all parties to be prepared to discuss a procedural schedule.

On October 17, 2011, in the Complaint Docket, someone filed a letter regarding Montezuma written by Mr. Buddeke to the Director of ADEQ's Water Quality Division.

On October 18, 2011, in the 40-252 Docket, Mr. Dougherty filed a Response to Company's Arsenic Treatment Plan; Motion for Sanctions; Motion to Suspend Lease Agreement.

On October 25, 2011, in the 40-252 Docket, Montezuma filed a Supplemental and Amended Proposed Plan for Arsenic Abatement, in which Montezuma stated the following: "When the Company has a proposed lease from GEcom, it will docket the lease and provide additional financial information which relates to the lease. It will not execute the lease or move forward with construction of the treatment plant until the commission has signed off on the proposed plan."

On October 25, 2011, in the Complaint Docket, Montezuma filed a Motion to Strike Subpoena Duces Tecum, concerning a Subpoena that had been served on Ms. Olsen.

On October 25, 2011, in the Complaint Docket, Montezuma filed Montezuma's Witnesses and Exhibits, stating that Montezuma intended to call as witnesses Ms. Olsen, John Campbell, and Mr. Dougherty and further stating that Montezuma had not yet determined its hearing exhibits.

On October 25, 2011, the procedural conference in the Complaint Docket was held as scheduled. The Subpoena Duces Tecum issued to Ms. Olsen was quashed; Mr. Dougherty and Montezuma agreed to allow Mr. Dougherty to review contested documents at the office of Montezuma's counsel beginning on October 31, 2011; Staff provided its assessment of the Complaint allegations and stated that it did not intend to initiate an OSC; a discussion occurred regarding Ms. Olsen's concerns for her security at future proceedings;[27] and it was established that a status conference would be held in approximately 45 days to determine the status of discovery and whether a hearing could be scheduled at that time. Montezuma also agreed to docket a copy of the Felony Release Conditions and Release Order that had led to the discussion regarding Ms. Olsen's security. The parties were also reminded that they were expected to cooperate fully in discovery.

On October 25, 2011, in the 40-252 Docket, Montezuma filed a Motion to Compel Discovery, requesting that Mr. Dougherty be ordered to produce all communications, including print copies of e-mails, between Mr. Dougherty and Ivo Buddeke and further requesting that Mr. Dougherty be required to pay Montezuma's attorney fees for the Motion. Montezuma also filed a Certificate of Counsel in Support of Discovery Motion.

On October 28, 2011, in the 40-252 Docket, Mr. Dougherty filed three different discovery-related Motions, along with associated Certificates of Intervenor in Support of Motion:

- A Motion to Compel Discovery; Motion to Set Deadline for Production of Documents, requesting that the Commission order Montezuma to produce, by a date certain, all records responsive to Mr. Dougherty's Second Data Request and requesting that Montezuma be required to pay Mr. Dougherty reasonable fees for expenses related to preparation and submission of the Motion;

[27] The security issue was addressed after Mr. Buddeke arrived at the procedural conference as a spectator, and Ms. Olsen called the police to respond. At the time, Mr. Buddeke faced felony charges originating in Verde Valley Justice Court case CR201103826, and a July 12, 2011, Felony Release Conditions and Release Order directed Mr. Buddeke not to contact in any manner several alleged victims, including Ms. Olsen. After discussions with Capitol Police, Mr. Buddeke left the building. Because Mr. Dougherty had indicated that he intended to call Mr. Buddeke as a witness, there was a discussion of the accommodations necessary to allow for Mr. Buddeke's live testimony. Mr. Buddeke was ultimately acquitted of the criminal charges originating in the Verde Valley Justice Court.

- A Motion for Protective Order, requesting that a protective order be issued to prevent the annoyance, oppression, invasion of privacy, harassment, and undue burden and expense of Montezuma's demand for emails between Mr. Dougherty and Mr. Buddeke; and
- A Motion to Deny Company's Motion to Compel, requesting that Montezuma's Motion to Compel be denied, that Montezuma be required to bear all attorney fees from the preparation and submission of its Motion, and that Montezuma be required to pay Mr. Dougherty reasonable fees for the preparation and submission of the Motion to Deny.

On October 28, 2011, in the Complaint Docket, Mr. Dougherty filed a Motion to Compel Discovery; Motion to Set Deadline for Production of Documents or Face Contempt along with a Certificate of Complainant in Support of Discovery Motion. Mr. Dougherty stated that he had served additional data requests on Montezuma on October 25, 2011; that Montezuma had responded by asserting that the data requests violated the Arizona Rules of Civil Procedure but confirming the previously agreed scheduled time for Mr. Dougherty to review records; that Mr. Dougherty had emailed to determine whether the records from the new data requests would be available for review; that Mr. Dougherty had then telephoned and spoken to Montezuma's counsel to try to reach agreement as to the data requests; and that Montezuma had then canceled the scheduled time for review of records via email the next day, stating that Montezuma would be seeking a Protective Order. Mr. Dougherty filed a correction to this Motion on October 31, 2011.

On October 31, 2011, in the 40-252 Docket, Staff filed a Response to Procedural Order, stating that Montezuma planned to enter into an operating lease with GEcom for arsenic treatment equipment, that operating leases are not capital leases and do not require Commission approval, that Staff understood Ms. Olsen would be paying for the operating lease with her own funds, that there thus was no longer any need for Decision No. 71317 to be modified, that there was no need for an evidentiary hearing, and that the 40-252 Docket could be brought to a close and retained solely for compliance filings from Montezuma.

On November 2, 2011, in the Complaint Docket, Montezuma filed a Motion for Protective Order, acknowledging that Ms. Olsen had used Montezuma's business account to pay some personal expenses, but requesting that Ms. Olsen's personal financial records be protected from discovery, that

limitations be placed on Mr. Dougherty's discovery requests, and that Montezuma be instructed which data requests it needed to answer. *Inter alia*, Montezuma also requested that Mr. Dougherty be precluded from submitting duplicate data requests in the Complaint Docket and 40-252 Docket.

On November 2, 2011, in the 40-252 Docket, Montezuma filed a Notice along with the Felony Release Conditions and Release Order entered on July 12, 2011, by the Verde Valley Justice Court, for the pending criminal case against Mr. Buddeke. The Release Order stated that Mr. Buddeke could "not contact in any manner the alleged victim[s]," who included Ms. Olsen and Norm Rask. Montezuma stated that Mr. Dougherty had identified both Mr. Buddeke and Mr. Rask as witnesses and that the court had expressed concern that Ms. Olsen would be in the hearing room when Mr. Buddeke testified.

On November 2, 2011, in the 40-252 Docket, Montezuma also filed a Response to Motion to Compel Discovery, stating that Mr. Dougherty's data requests that were the subject of the motion were the same as those submitted in the Complaint Docket and Emergency Rate Docket as well as an Administrative Subpoena Duces Tecum in the Complaint Docket. Montezuma stated that Mr. Dougherty's numerous identical discovery requests had caused Montezuma undue burden, expense, and annoyance, and Montezuma adopted by reference the arguments set forth in its Motion for Protective Order filed in the Complaint Docket.

On November 3, 2011, in the 40-252 Docket, Mr. Dougherty filed a Motion to Investigate Ex Parte Communications, alleging that Staff had engaged in ex parte communications, in violation of A.A.C. R14-3-113(C)(2), by communicating with Montezuma regarding its arsenic abatement plan. Mr. Dougherty also filed a Supplemental to Motion to Investigate Ex Parte Communications.

On November 4, 2011, in the 40-252 Docket, Mr. Dougherty filed a Reply to Staff's Recommendation to Close Docket; Motion to Require Disclosure of Proposed Lease and Continued Discovery, stating that Staff's recommendation to close the docket was premature because it was not yet possible to determine whether the GEcom lease was an operating lease or a capital lease, as the lease had not yet been filed. Mr. Dougherty referenced the test to determine whether a lease is a capital lease, as set forth in Financial Accounting Standards Board Statement No. 13, Accounting for Leases. Mr. Dougherty moved for the Commission to order Montezuma to fully disclose the terms of

the lease and, further, for the Commission to continue the proceedings in the 40-252 Docket and hold an evidentiary hearing at a suitable time.

On November 7, 2011, in the 40-252 Docket, Staff filed a Response to Mr. Dougherty's Motion to Investigate Ex Parte Communications, explaining Staff's role as a party litigator, not a decision-maker, in the matter and asserting that Mr. Dougherty's motion should be denied.

On November 7, 2011, in the 40-252 Docket, Mr. Dougherty filed a Second Supplemental to Motion to Investigate Ex Parte Communications; Motion to Stay Proceedings; Motion for Independent Investigation, providing copies of email communications between Montezuma and various members of Staff and asserting that the proceeding should be stayed, Montezuma ordered not to move forward with construction of the arsenic treatment facility, and an independent investigation completed concerning the communications.

On November 7, 2011, in the Complaint Docket, Mr. Dougherty filed a Motion to Modify Formal Complaint with Additional Allegation XVII, requesting that the Complaint be modified to add an allegation that Montezuma and Staff had engaged in unauthorized communications in violation of the Ex Parte Rule.

On November 9, 2011, in the 40-252 Docket, Staff filed Staff's Response to Mr. Dougherty's Second Supplemental, which included a request for a procedural conference to dispel further confusion and clarify the record.

On November 9, 2011, in the 40-252 Docket, a Procedural Order was issued explaining the Ex Parte Rule and that Mr. Dougherty's allegations did not describe a violation of the Rule; denying Mr. Dougherty's motions related to the Rule; requiring Montezuma to make a filing explaining the material terms of the intended lease and the source and ownership of the funds to be used for lease payments, analyzing whether the lease was a capital lease or an operating lease under applicable accounting standards, and explaining Montezuma's intentions related to pursuing modification of Decision No. 71317; establishing a deadline for any response to Montezuma's filing; establishing that Mr. Dougherty's Motion for Hearing and Motion for Sanctions and Suspension had been deemed denied; denying Mr. Dougherty's Motion to Investigate; denying Mr. Dougherty's Motion for Disclosure and Discovery; denying Mr. Dougherty's Motion to Stay; and holding in abeyance

Montezuma's Motion to Compel, Mr. Dougherty's Motion to Compel, Mr. Dougherty's Motion for Protective Order, and Mr. Dougherty's Motion to Deny. The Procedural Order further dictated that a party not file a motion in the matter unless the party had made a reasonable inquiry and determined the motion to be well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

On November 10, 2011, in the Complaint Docket, a Procedural Order was issued explaining the Ex Parte Rule and denying as without merit Mr. Dougherty's Motion to Modify Formal Complaint with Additional Allegation XVII; scheduling a procedural conference to be held on November 23, 2011; requiring the parties to arrive to the hearing room at least one hour early to engage in discussions in an earnest attempt to settle the discovery dispute themselves; requiring Mr. Dougherty and Montezuma to be prepared to explain their positions as to each individual disputed request; and requiring each party to be prepared to discuss and make a proposal regarding future scheduling.

On November 23, 2011, in the Complaint Docket, the procedural conference was held as scheduled. At the procedural conference, Mr. Dougherty and Montezuma reported that most of the discovery issues had been resolved; they were asked for the resolution as to each item in Mr. Dougherty's first and second data requests; and alternate methods for Mr. Dougherty to obtain some of the information sought were discussed briefly. Ultimately, it was determined that Mr. Dougherty would be permitted to review records at the office of Montezuma's counsel on November 29, 2011; that Mr. Dougherty would prepare requests for admission as to some desired information; that Mr. Dougherty would seek bank records from Chase Bank using a release to be provided by Montezuma; that Mr. Dougherty would seek records from Yavapai County Development Services through a public records request; and that another procedural conference would be held in approximately two months to obtain updates and discuss the scheduling and process for the matter going forward. It was also determined that Montezuma would make a filing regarding the dates Ms. Olsen would be unavailable due to the Buddeke trial.

On November 30, 2011, in the Complaint Docket, Montezuma filed a Notice of Unavailability, identifying periods during which Ms. Olsen expected to be unavailable due to her status as a witness in the Buddeke trial.

On December 5, 2011, in the Complaint Docket, Staff made a filing regarding availability of a telephone bridge line for future procedural conferences.

On December 5, 2011, in the 40-252 Docket, the National Park Service filed a letter requesting that the Commission hold an evidentiary hearing on Montezuma's request for an operating lease to fund an arsenic treatment facility and urging that Montezuma be required to complete an EIS as a condition of funding the arsenic treatment facility project.

On December 7, 2011, in the Complaint Docket, a Procedural Order was issued scheduling a procedural conference to be held on January 18, 2012, and directing the parties to be prepared to provide updates regarding discovery and to discuss and make proposals as to future scheduling.

On December 7, 2011, in the 40-252 Docket, Montezuma filed an Interim Report stating that Montezuma had not yet received the written lease from GEcom, but that Montezuma expected Odyssey Equipment Financing Company ("Odyssey") to provide financing for the lease payments. Montezuma stated: "Construction is in process for building the plant." Montezuma further stated that Ms. Olsen, personally, was expected to enter the lease with GEcom; to make the payments to GEcom or Odyssey with her own personal funds; and then to sublease the system to Montezuma. Montezuma further stated that because it had not yet had access to the lease agreement or prepared the sublease agreement, Montezuma was not in a position to offer meaningful analysis of whether either lease should be characterized as a capital lease or an operating lease. Montezuma requested an extension of the deadline to submit its lease analysis. Montezuma further asserted that there was no longer a need to pursue modification of Decision No. 71317 and that the matter could be brought to a close and the 40-252 Docket left open only for compliance filings.

On December 15, 2011, in the 40-252 Docket, Mr. Dougherty filed a Response to Montezuma's Interim Report; Motion to Deny Extension of Deadline; Motion for Evidentiary Hearing. Regarding the Interim Report, Mr. Dougherty asserted, *inter alia*, that the description of the intended lease in the Interim Report suggested a capital lease and that Montezuma had begun

construction of the arsenic treatment plant in spite of its previously having stated in a filing of October 25, 2011, that it would "not move forward with construction of the treatment plant until the commission has signed off on the proposed plan." Mr. Dougherty requested that the Commission deny the requested filing date extension and schedule an evidentiary hearing to consider Montezuma's financing plan, Montezuma's apparent insolvency, and whether to revoke Montezuma's CC&N; Mr. Dougherty also asserted that the 40-252 Docket should be left open until the Commission either approved or disapproved Montezuma's final financing plan.

On December 22, 2011, in the 40-252 Docket, Mr. Dougherty filed a Petition Requesting the Commission Require an Environmental Impact Statement, including 1,072 signatures gathered online.

On January 4, 2012, in the 40-252 Docket, a Procedural Order was issued denying Mr. Dougherty's Motion for an Evidentiary Hearing, scheduling a procedural conference to be held jointly with the Complaint Docket, requiring Montezuma to be prepared at the procedural conference to explain the status of the lease agreement arrangement for the arsenic treatment facilities and building, and requiring Montezuma to "file copies of any and all written lease documents for the arsenic treatment plant and building as soon as such documents come into Montezuma Rimrock's possession and . . . provide courtesy copies of those documents to Mr. Dougherty and Staff through electronic mail." The parties were also instructed, if the lease documents were made available to them at least 24 hours before the procedural conference, to prepare analyses concerning the categorization of the lease, the need for Commission approval of the lease, whether the 40-252 Docket should remain open, and whether an evidentiary hearing should be held for the 40-252 Docket. Montezuma was directed to be able to identify at the procedural conference the date by which the lease documents would be made available, if the lease documents were not available at least 24 hours before the procedural conference.

On January 6, 2012, in the 40-252 Docket, Ms. Olsen personally filed a Request to Have John Dougherty Removed as Intervener, requesting that Mr. Dougherty be removed as an intervenor from all dockets involving Montezuma. In the Request, Ms. Olsen made a number of allegations against Mr. Dougherty, including that Mr. Dougherty had violated an Injunction by sending Ms. Olsen an e-

mail on December 4, 2011, and that Mr. Dougherty was aware that he was not permitted to contact Ms. Olsen due to the Injunction.

Also on January 6, 2012, in the 40-252 Docket, Douglas Fitzpatrick, counsel for Montezuma, filed a Motion to Withdraw, with client consent. Counsel cited the "excessive and burdensome barrage of motions and discovery requests submitted" by Mr. Dougherty, which resulted in "significant time demands . . . and . . . bills for legal services which are onerous."

On January 6, 2012, in the Complaint Docket, Mr. Fitzpatrick filed a Motion to Withdraw, with client consent, for the same reasons stated in the Motion to Withdraw filed in the 40-252 Docket.

On January 11, 2012, a Procedural Order was issued in the 40-252 Docket stating that Ms. Olsen's Request was improper and would not be considered because Montezuma had been represented by counsel at the time Ms. Olsen's Request was filed and continued to be represented by counsel. The Procedural Order determined that Ms. Olsen had no right to make filings on behalf of Montezuma as its representative and had no right to conduct any aspect of the litigation of the case except through counsel until such time as Montezuma was no longer represented by counsel.[28] The Procedural Order also denied Mr. Fitzpatrick's Motion to Withdraw, in that counsel had not established therein that the withdrawal would not interfere with the administration of justice and would not prejudice any party to the matter, due to the existing Injunction Against Harassment issued by the Verde Valley Justice Court, under which Mr. Dougherty was prohibited from having any contact with Ms. Olsen "except through attorneys, legal process, and court hearings." The Procedural Order pointed out that the Injunction did not clarify whether Mr. Dougherty could engage in any of the communications (outside of a formal proceeding at the Commission) that would be typical between parties in a contested case and necessary for the matter to move forward with Mr. Dougherty continuing to appear *pro se* and Montezuma not represented by counsel. The Procedural Order stated that the Motion to Withdraw could not and would not be granted until either Montezuma provided notice that it had retained replacement counsel or Ms. Olsen provided documentation establishing

[28] The Procedural Order cited *Lincoln v. Lincoln*, 155 Ariz. 272, 746 P.2d 13 (Ariz. Ct. App. 1987).

that she was qualified to serve as Montezuma's representative under Arizona Supreme Court Rule 31(d)(28) and that, pursuant to an Order issued by the Verde Valley Justice Court, Mr. Dougherty could communicate directly with Ms. Olsen, or the Injunction Against Harassment had been dismissed. The Procedural Order denied the Motion to Withdraw, without prejudice; continued the scheduled procedural conference; and established a deadline for Montezuma to make the described filing.

On January 11, 2012, in the Complaint Docket, a Procedural Order was issued denying Mr. Fitzpatrick's Motion to Withdraw, for the same reasons cited in the Procedural Order issued in the 40-252 Docket; continuing the procedural conference scheduled for January 18, 2012, until further order of the Commission; and establishing the same requirements related to Montezuma's representation as had been established in the Procedural Order issued in the 40-252 Docket.

On February 7, 2012, in the Complaint Docket, Mr. Dougherty filed a Motion to Compel Discovery, recounting communication efforts made with Mr. Fitzpatrick to gain discovery of records requested in Mr. Dougherty's Third Data Request and requesting that Montezuma be ordered immediately to produce the records. Mr. Dougherty also filed a Certificate of Complainant in Support of Discovery Motion.

On February 21, 2012, in the 40-252 Docket, Ms. Olsen made a filing that included a January 27, 2012, cover letter from Kevlor Design Group, LLC, ("Kevlor") to Ms. Olsen regarding Proposal ID KDG012712, along with an unexecuted "Contract for: Arsenic Treatment System With Patricia Olsen Owner/Operator of Montezuma Rimrock Water Company, LLC" showing a total project cost of $46,000 for design; manufacturing; delivery; and installation of an arsenic removal system up to the wellhead at Well No. 1, with installation including tie-ins with shut-off valves, manual by-pass valves, and coupling spools or tees. The filing also included an unexecuted Water Services Agreement between Ms. Olsen and Montezuma, under which Montezuma would pay Ms. Olsen for arsenic treatment (including installation, maintenance, and ownership of the facilities) for 20 years and would be required to buy the arsenic treatment system for $1 at the end of the 20-year period. The monthly payments to Ms. Olsen under the Water Services Agreement would be $1,500 per month as a "Monthly Standby Fee" to recover the cost of constructing the facilities, plus a $400 per

acre foot treatment fee and, to the extent more than 42 acre feet of water were treated in a year, another $400 additional treatment fee per acre-foot. The filing also included four pages of an unexecuted "5 Page Lease Agreement" form showing Financial Pacific Leasing, LLC ("Financial Pacific") as Lessor, not identifying a Lessee, and bearing the identifier "App# 365512, 092007C" in its footer.

On February 27, 2012, in the Complaint Docket, a Procedural Order was issued holding in abeyance Mr. Dougherty's Motion to Compel Discovery, until further Order of the Commission, due to the unresolved issue related to Montezuma's representation. Additionally, the Procedural Order stated the following:

> Meanwhile, the parties are reminded that each party has a duty to deal with the other in good faith. The continuing disputes between these parties suggest a failure to honor this duty. The parties are strongly urged to make additional efforts to resolve their current discovery dispute without involving the Commission. The parties have previously shown that they are capable of resolving their own discovery disputes with a little bit of effort.[29]

On March 9, 2012, in the 40-252 Docket, Montezuma filed Notice of Replacement Counsel, stating that Montezuma would be represented by Todd C. Wiley of Fennemore Craig, P.C.

On March 12, 2012, in the Complaint Docket, Montezuma filed Notice of Replacement Counsel, stating that Montezuma would be represented by Mr. Wiley.

On March 12, 2012, in the 40-252 Docket, a Procedural Order was issued granting the Motion to Withdraw previously denied without prejudice for Montezuma's counsel; scheduling a joint procedural conference for April 13, 2012; and ordering as follows:

> [I]f Montezuma Rimrock has executed any contractual documents related to purchase, construction, installation, operation, or maintenance of an arsenic treatment facility to treat the water from its Well # 1 and/or Well # 4, Montezuma Rimrock shall, by March 30, 2012, file a copy of all such contractual documents in this docket.

On March 13, 2012, in the Complaint Docket, a Procedural Order was issued granting Mr. Fitzpatrick's Motion to Withdraw; scheduling a joint procedural conference to be held for both the Complaint Docket and the 40-252 Docket on April 13, 2012; and requiring Montezuma and Mr.

[29] Procedural Order of February 27, 2012, issued in the Complaint Docket. The quoted text was directly followed by the following footnote text: "This was evidenced by the parties' resolution of their then-existing discovery dispute through the relatively brief discussions held prior to the most recent procedural conference."

Dougherty either to make a joint filing before April 13, 2012, indicating that their discovery dispute had been resolved and that Mr. Dougherty's Motion to Compel was withdrawn or to arrive for the procedural conference at least one hour early to engage in discussions in an earnest attempt to settle the discovery dispute themselves. The Procedural Order also explained what would be required during the procedural conference if no resolution of the dispute had been reached and required each party to be prepared to discuss and make a proposal as to future scheduling for the matter.

On March 13, 2012, in the 40-252 Docket, Mr. Dougherty filed a Motion to Bar Execution of Arsenic Treatment Contract, requesting the Commission to bar Montezuma from entering into any contract in connection with arsenic treatment facilities or, in the alternative, to bar Montezuma from implementing any contract that had already been signed, until after the other parties had an opportunity to analyze and comment on the contract and the Commission approved the contract.

On March 14, 2012, in the 40-252 Docket, original counsel for Montezuma filed a Notice of Withdrawal of Motion to Withdraw.

On March 19, 2012, Ms. Olsen made a filing in the 40-252 Docket, this time including an e-mail sent to Ms. Olsen; a "Statement to the Arizona Corporation Commission" from "Gregory S. Olsen, Hydrologist"; two executed one-page lease agreements between Ms. Olsen and Nile River, one a 36-month lease for arsenic building plant and the other a 60-month lease for arsenic removal water treatment system, and both apparently signed by Ms. Olsen and "Robin Richards" on March 16, 2012; an unexecuted Water Services Agreement between Ms. Olsen and Montezuma, with the same material terms as filed in the previous filing by Ms. Olsen; and a Kevlor "Contract for: Arsenic Treatment System With Patricia Olsen Owner/Operator of Montezuma Rimrock Water Company, LLC" regarding Proposal ID KDG012712 with an executed Contract Acceptance Form apparently signed on January 27, 2012, by Kelvin Duffy for Kevlor and on February 28, 2012, by Ms. Olsen.

On March 20, 2012, in the 40-252 Docket, Montezuma filed a Response to Motion to Bar Execution of Arsenic Treatment Contract, stating that the Motion should be summarily denied as contrary to law, unsupported, and frivolous. The Response further stated that Montezuma's current arsenic treatment plan was to have Ms. Olsen, in her individual capacity, enter into a contract with Kevlor for construction and operation of arsenic treatment facilities; for Ms. Olsen to finance those

facilities through a lease agreement with Odyssey; and for Ms. Olsen to enter into a Water Services Agreement with Montezuma under which Ms. Olsen would lease the arsenic treatment facilities to Montezuma. Montezuma stated that the terms and conditions of the Kevlor contract, and the terms of the Water Services Agreement, had been filed with the Commission on February 21, 2012, and that the contracts and lease agreement were in the process of final execution and would be filed as soon as possible. Montezuma further stated that the Commission had no authority over the agreement between Ms. Olsen and Kevlor, the agreement between Ms. Olsen and Odyssey, or the Water Services Agreement between Ms. Olsen and Montezuma, because there was no debt issuance involved. Montezuma acknowledged that operational expenses could be reviewed by the Commission or Staff as part of a rate case.

On March 21, 2012, in the 40-252 Docket, Mr. Dougherty filed a Response to Company's Signed Purchase, Lease and Sublease Agreements; Supplement to Motion to Bar Implementation of Signed Contracts, taking issue with the material terms of the various agreements filed on March 20, 2012, and stating that Montezuma was entering into a capital lease agreement and that Ms. Olsen's role essentially should be ignored as a "ploy to sidestep regulatory oversight." Mr. Dougherty requested that the Commission bar implementation of the signed purchase agreement, lease agreement, and water services agreement until the agreements received full Commission approval.

On March 21, 2012, in the 40-252 Docket, Mr. Dougherty also filed a Motion to Deny Counsel's Notice of Withdrawal of Motion to Withdraw, based upon the expense of having Montezuma retain and pay two attorneys.

On April 6, 2012, in the 40-252 Docket, Mr. Dougherty filed a Motion to Reschedule April 13 Hearing, requesting rescheduling based on Mr. Dougherty's need to travel out of state due to an unforeseen family medical situation and then business.

On April 6, 2012, in the Complaint Docket, Mr. Dougherty filed a Motion to Reschedule April 13 Hearing, for the same reasons as stated in the 40-252 Docket request.

On April 9, 2012, in the 40-252 Docket, a Procedural Order was issued vacating the joint procedural conference scheduled for April 13, 2012; scheduling a joint procedural conference to be held on April 30, 2012; requiring Montezuma, through counsel, to file, by April 13, 2012, complete

copies of any and all executed agreements by Ms. Olsen or Montezuma for arsenic treatment; and requiring the parties to file, by April 27, 2012, an analysis of each document, a position on whether the 40-252 Docket should remain open, and a position on whether an evidentiary hearing should be held in the 40-252 Docket. The Procedural Order noted that both Mr. Dougherty's March 13, 2012, Motion to Bar Execution of Arsenic Treatment Contract and the March 14, 2012, Notice of Withdrawal of Motion to Withdraw filed by Montezuma's original counsel had been deemed denied.

On April 9, 2012, in the Complaint Docket, a Procedural Order was issued vacating the joint procedural conference scheduled for April 13, 2012; scheduling a joint procedural conference to be held on April 30, 2012; requiring the parties to arrive an hour early to engage in discovery dispute settlement discussions before the procedural conference if they had not made a joint filing as to its resolution before that date; and requiring the parties to be prepared to discuss scheduling.

On April 13, 2012, in the 40-252 Docket, Montezuma filed a Notice of Filing including the following documents: a "Water Services Agreement between the Company and Ms. Olsen dated March 16, 2012"; the "Terms and Conditions of Lease between Ms. Olsen and Nile River Leasing dated March 16, 2012"; and a "Contract for Arsenic Treatment System between Ms. Olsen and Kevlor Design Group dated February 28, 2012." Montezuma stated that the documents had previously been filed on March 19, 2012. The Water Services Agreement copy filed showed execution by Ms. Olsen as both lessor and lessee on March 16, 2012. The Nile River leases showed execution by Ms. Olsen and "Robin Richards" on March 16, 2012. The Kevlor contract showed acceptance by Kevlor on January 27, 2012, and by Ms. Olsen on February 28, 2012.

On April 13, 2012, in the Complaint Docket, Mr. Dougherty filed a Submission of Exhibit 11A in Support of Allegations IV & VIII of the Complaint. The document attached was an April 10, 2012, letter from YCDS notifying Ms. Olsen that the administrative extension for Montezuma's approved Use Permit had expired on April 5, 2012, because no Certificate of Compliance had been obtained, and further stating that the Use Permit to allow the operation of Well No. 4 as part of the Montezuma Rimrock Water Company had been revoked as of April 5, 2012.

On April 20, 2012, in the 40-252 Docket, Mr. Dougherty filed a Motion to Stay, stating that the YCDS had revoked Montezuma's Use Permit for Well No. 4 on April 9, 2012; that Montezuma

had filed a cross-claim in the Yavapai County lawsuit seeking to have the Yavapai County Water Code ruled invalid; that ADEQ had issued a NOV to Montezuma for failure to comply with Consent Order No. DW-36-10, which required for the arsenic treatment plant to be installed by April 7, 2012; and that it thus was not in the best interests of Montezuma, its customers, or the public for proceedings in the 40-252 Docket to continue. Mr. Dougherty requested that the Commission stay all proceedings in the 40-252 Docket until the pending legal and administrative issues regarding Montezuma's Use Permit were settled in Yavapai County and the ADEQ NOV was resolved. Mr. Dougherty included copies of the referenced documents.

On April 27, 2012, in the 40-252 Docket, Staff filed Staff's Notice of Response to Procedural Order, analyzing the Water Services Agreement and determining that it was a capital lease agreement requiring Commission approval, stating that the 40-252 Docket should remain open to evaluate whether to modify Decision No. 71317 to allow for the Water Services Agreement, and stating that there was no need for a hearing on the Water Services Agreement. Staff included a Memorandum by a Staff Analyst.

On April 27, 2012, in the 40-252 Docket, Montezuma filed a Legal Brief stating that "the three agreements at issue speak for themselves"; that the Kevlor contract was strictly between Ms. Olsen and Kevlor and thus not subject to Commission jurisdiction or in need of Commission approval; that the lease between Ms. Olsen and Nile River was strictly between Ms. Olsen and Nile River and thus not subject to Commission jurisdiction or in need of Commission approval; and that the Water Services Agreement was an operational agreement, with an option to purchase, and not an issuance of indebtedness requiring Commission approval under A.R.S. § 40-301 *et seq.* Montezuma asserted that modification of Decision No. 71317 was no longer necessary and that the 40-252 Docket should be closed and Montezuma permitted to go forward with the implementation of its agreements.

On April 27, 2012, in the 40-252 Docket, Mr. Dougherty filed a Response to Procedural Order, stating that the Water Services Agreement was a capital lease needing Commission approval, that the 40-252 Docket should remain open, and that an evidentiary hearing should be held in the 40-

252 Docket before the Commission allowed any modification of Decision No. 71317 or approved any alternate financing method for Montezuma's arsenic treatment facilities.

On April 30, 2012, a joint procedural conference was held in the 40-252 Docket and the Complaint Docket. During the procedural conference, Montezuma asserted that there was no need to revise Decision No. 71317 because Montezuma no longer desired to obtain a private loan; Staff asserted that Decision No. 71317 would still need to be revised if Montezuma wanted to implement an ARSM; Montezuma stated that Well No. 4 was to be used only for backwash and that such use was permissible according to both Yavapai County and ADEQ; Mr. Dougherty disputed Montezuma's assertions regarding the County and ADEQ; Montezuma acknowledged that the Water Services Agreement would be considered a capital lease under Generally Acceptable Accounting ("GAAP") Standards; Montezuma stated that it expected to file a new rate case in the next couple of weeks; Mr. Dougherty stated that he might withdraw his Complaint in the Complaint Docket if he were granted intervention in the rate case; and Montezuma was instructed that it needed to determine, and make appropriate filings regarding, how it desired to finance its arsenic treatment facilities in light of the different requirements for Commission approval that would result from different chosen paths. Additionally, Mr. Dougherty's Motion to Compel and Motion to Stay in the 40-252 Docket were denied.

On May 16, 2012, in the 40-252 Docket, Mr. Dougherty filed an Emergency Motion for Temporary Restraining Order and Order to Show Cause, stating that he had witnessed construction of an arsenic treatment facility at Well No. 1 on May 15, 2012; that records he obtained from ADEQ showed that there had been an April 26, 2012, meeting between ADEQ, Staff, and Montezuma at which Montezuma stated that it would have the arsenic facilities installed by June 7, 2012, to meet an ADEQ compliance deadline; and that irreparable harm would be done if the arsenic treatment facility were allowed to continue and an injunction was necessary to preserve the status quo until Montezuma submitted proposed financing and operational plans, contingent on the inability to use Well No. 4, and the Commission determined whether the financing plans needed formal approval. Mr. Dougherty included an ADEQ document memorializing the April 26, 2012, meeting and a May 1, 2012, letter constituting Montezuma's application for appeal of the revocation of its Use Permit by YCDS.

On May 25, 2012, in the 40-252 Docket, Mr. Dougherty filed notice that the Verde Valley Justice Court had, on May 23, 2012, dismissed the Injunction Against Harassment Order obtained against him by Ms. Olsen. Mr. Dougherty included a copy of the Court Order.

On May 31, 2012, Montezuma filed, in the Rask Docket, an application for approval of financing in the form of a loan agreement in which Montezuma promised to pay Rask Construction ("Rask") the sum of $68,592, with interest from May 1, 2012, at a rate of 6 percent per year, for Rask's installation of a water line from the well on Tiemann (Well No. 4) to Well No. 1 on Towers.

On May 31, 2012, Montezuma filed, in the Olsen Docket, an application for approval of financing in the form of a loan agreement in which Montezuma promised to pay Ms. Olsen the sum of $21,377, with interest from August 30, 2011, at a rate of 6 percent per year, for the purchase of the Well No. 4 site and a company vehicle.

On May 31, 2012, Montezuma filed, in the Arias Docket, an application for approval of financing in the form of a loan agreement in which Montezuma promised to pay Sergei Arias the sum of $15,000, with interest from July 1, 2011, at a rate of 6 percent per year, for the purchase of an 8,000-gallon hydro-pneumatic tank to provide additional water storage to the system.

On May 31, 2012, in the Rate Docket, Montezuma filed a rate application using a 2011 test year ("TY"), to comply with the filing deadline imposed by Decision No. 71317, although Montezuma acknowledged that the application was not sufficient.

On June 7, 2012, Mr. Dougherty filed a Motion to Intervene in the Rask Docket, a Motion to Intervene in the Olsen Docket, a Motion to Intervene in the Arias Docket, and a Motion to Intervene in the Rate Docket. Mr. Dougherty also requested consolidation of the Rask Docket, the Olsen Docket, the Arias Docket, and the Rate Docket and that an evidentiary hearing be held.

On June 14, 2012, in the Olsen Docket, a comment was filed expressing opposition to the Olsen Docket's request to approve financing for Montezuma to purchase a vehicle.

No response or objection was filed to any of Mr. Dougherty's Motions to Intervene.

On June 25, 2012, a Procedural Order was issued in the Rask Docket granting Mr. Dougherty's Motion to Intervene, requiring Montezuma and Staff to file responses to Mr.

Dougherty's requests for consolidation and for an evidentiary hearing, and requiring Montezuma to identify its representative for the Rask Docket.

On June 25, 2012, Procedural Orders were issued in the Olsen Docket, the Arias Docket, and the Rate Docket with the same provisions as in the Procedural Order for the Rask Docket.

On July 2, 2012, in the Rate Docket, Staff issued a Letter of Insufficiency.

On July 2, 2012, in the Rask Docket and the Olsen Docket, Mr. Buddeke filed comments opposing Montezuma's applications, stating that Montezuma had built "a pipeline to nowhere" at ratepayer expense.

On July 9, 2012, in the Rask Docket, the Olsen Docket, and the Arias Docket, Pamela Benetos filed comments opposing Montezuma's applications.

On July 16, 2012, in the Rask Docket, the Olsen Docket, the Arias Docket, and the Rate Docket, Ms. Olsen filed letters stating that Montezuma opposed an evidentiary hearing and opposed consolidation.

On July 16, 2012, in the Rask Docket, the Olsen Docket, the Arias Docket, and the Rate Docket, Staff filed Staff's Response to Procedural Order, stating that Staff supported consolidation of the Rate Docket with the Rask Docket, the Olsen Docket, and the Arias Docket and that Staff was taking no position on whether an evidentiary hearing should be held.

On July 24, 2012, a Procedural Order was issued consolidating the Rask Docket, the Olsen Docket, the Arias Docket, and the Rate Docket into the Consolidated R&F Docket; ordering that an evidentiary hearing would be held in the Consolidated R&F Docket; ordering Montezuma to file a Notice of Appearance if it intended to be represented by an attorney or another eligible individual; and establishing general procedural requirements.

On August 3, 2012, in the Consolidated R&F Docket, Ms. Olsen filed for Montezuma a document stating that Montezuma had not received Staff's Letter of Insufficiency until July 27, 2012, when it was sent by e-mail, and requesting a 30-day extension to respond to Staff's data requests.

On August 8, 2012, in the Consolidated R&F Docket, Staff filed Staff's Response to Request for Extension, stating that Staff had mailed the Letter of Insufficiency by certified mail on July 3, 2012, and had received it back as unclaimed mail on July 25, 2012. Staff expressed concern that the

Letter of Insufficiency had been returned as unclaimed when it had been sent by certified mail to the main address on file for Montezuma.[30] Staff also stated, however, that it did not object to Montezuma's requested 30-day extension.

On August 9, 2012, in the Consolidated R&F Docket, a Procedural Order was issued stating that the Hearing Division generally does not become involved with extension requests filed before an application is determined to be sufficient by Staff and that, under A.A.C. R14-2-103(B), Staff could exercise discretion regarding the amount of time an applicant could be permitted to respond to a Letter of Insufficiency and Data Request. The Procedural Order did, however, require Montezuma to make a filing clarifying the mailing address for documents sent to it.

On August 14, 2012, in the Consolidated R&F Docket, Ms. Olsen filed a document stating that Montezuma's mailing address continued to be the same.[31]

On September 4, 2012, in the Consolidated R&F Docket, Ms. Olsen filed Montezuma's responses to the Letter of Insufficiency, which included amended rate application pages along with a number of supporting documents. The amended application pages showed that Montezuma was requesting an increase in revenue of $43,400, which Montezuma estimated would result in a rate increase of approximately $18.08 per month for each of its 202 metered customers.

On September 14, 2012, in the Consolidated R&F Docket, Ms. Olsen filed an amended plant summary page for Montezuma's rate application.

On October 9, 2012, in the Consolidated R&F Docket, Ms. Olsen filed several amended pages for Montezuma's rate application, along with supporting documents. The amended application pages showed that Montezuma was requesting an increase in revenue of $76,800, which Montezuma estimated would result in a rate increase of approximately $32.00 per month for each of its 202 metered customers. Montezuma further requested a "JD Legal Surcharge" of $6.57 per customer per month for legal fees that Montezuma attributed to Mr. Dougherty's intervention, which Montezuma stated amounted to $47,298.09 over a three-year period.

[30] The address used was P.O. Box 10, Rimrock, Arizona 86335.
[31] The address identified was P.O. Box 10, Rimrock, Arizona 86335.

On October 10, 2012, in the Consolidated R&F Docket, Mr. Dougherty filed a Motion requesting that Montezuma be ordered to provide Mr. Dougherty with copies of all past and future filings made by Montezuma in the Consolidated R&F Docket. Mr. Dougherty stated that Montezuma had failed to provide copies of documents filed in the Consolidated R&F Docket on July 16, August 3, August 14, September 4, September 14, and October 9. Mr. Dougherty also stated that Montezuma had failed to provide Mr. Dougherty copies of motions and responses filed in the Financing I, Financing II, and Financing III Dockets.

On October 25, 2012, in the Consolidated R&F Docket, Ms. Olsen filed an affidavit stating that the Statements in Support of Rate Request, Current and Proposed Rates and Charges, and Narrative Description of Application for Rate Adjustment pages from its amended application had been mailed to Montezuma's customers on October 12, 2012.

On October 26, 2012, in the Complaint Docket, Mr. Dougherty filed a Notice of Filing Additional Exhibits; Motion to Set Hearing, including an excerpt from June 18, 2012, YCBOS meeting minutes upholding revocation of Montezuma's Use Permit for Well No. 4; a September 20, 2012, Yavapai County Superior Court ruling upholding the Yavapai County Water Code; and an October 2, 2012, Yavapai County Notice of Violation for non-permitted use on the parcel containing Well No. 4. Mr. Dougherty requested that a hearing be set on the Complaint, as amended, at the soonest possible date.[32]

On October 29, 2012, in the Consolidated R&F Docket, a Procedural Order was issued requiring Montezuma to serve upon Mr. Dougherty, by November 10, 2012, a copy of each filing made by Montezuma to date in each docket underlying the Consolidated R&F Docket; requiring Montezuma to file proof of service upon Mr. Dougherty; and requiring Montezuma to include in all future filings proof of service conforming to the requirements of A.A.C. R14-3-107(C).

On November 2, 2012, in the Consolidated R&F Docket, Staff filed a Letter of Sufficiency, stating that Montezuma's rate application had met the sufficiency requirements outlined in A.A.C. R14-2-103 and had been classified as a Class D utility.

[32] No response was filed to Mr. Dougherty's Motion to Set Hearing filed in the Complaint Docket; it was deemed denied as of November 15, 2012.

On November 5, 2012, in the Consolidated R&F Docket, Montezuma filed several amended rate application pages, including amended proposed rates and charges representing a larger increase than previously requested.

On November 8, 2012, in the Consolidated R&F Docket, a Rate Case Procedural Order was issued scheduling a hearing to commence on February 7, 2013, and establishing other procedural requirements and deadlines.

Also on November 8, 2012, in the Consolidated R&F Docket, Staff filed a Request for Procedural Schedule, requesting that a scheduling Procedural Order be issued and providing several suggested procedural deadlines, not including a hearing date.[33]

On November 9, 2012, in the Consolidated R&F Docket, the Residential Utility Consumer Office ("RUCO") filed RUCO's Application to Intervene.

On November 15, 2012, in the Consolidated R&F Docket, Montezuma filed a Response to Procedural Orders stating that the October 29, 2012, Procedural Order had been received on November 13, 2012, and that Montezuma had mailed all of the required filings to Mr. Dougherty on November 14, 2012, via certified mail, for which Montezuma provided a copy of a receipt as proof of service. Montezuma also requested an extension of time to file its response to the Staff Report and of the deadline for new discovery requests, stating that Ms. Olsen needed to be available both before and during Mr. Buddeke's criminal trial, set to take four days, commencing on January 24, 2013. Montezuma further stated that it had received no data requests from Mr. Dougherty, but believed that they would be onerous and would necessitate three weeks to respond.

On November 23, 2012, in the Consolidated R&F Docket, a Procedural Order was issued granting RUCO's Application to Intervene, to which no objection had been filed.

On November 26, 2012, in the Consolidated R&F Docket, Montezuma filed an amendment to its rate application, newly requesting a surcharge of $6.04 per customer per month to replace two storage tanks that Montezuma stated had been repaired repeatedly and had become beyond repair.

[33] The Procedural Order was filed at 2:38 p.m., and Staff's Request for Procedural Schedule was filed at 4:10 p.m., apparently prior to Staff's having received its distributed copy of the Procedural Order.

Montezuma included a copy of an estimate from Cashion Tank & Steel Co. showing that the cost to build two 30,000-gallon water storage tanks would be $58,000.

On November 30, 2012, in the Consolidated R&F Docket, Mr. Dougherty filed both a Certificate of Intervener in Support of Discovery Motion and a document entitled "Notice of Filing First Data Request to Montezuma Rimrock; Motion to Compel Production of Records requested in First Data Request; Notice of Filing Second Data Request to Montezuma Rimrock; Notice of Montezuma Rimrock Violating Oct. 29 Procedural Order requiring Company to Comply with A.A.C. R14-3-107(C) and Motion for Sanctions; Notice of Filing Yavapai County Judgment Case No: V32012000758 vs. Montezuma Rimrock." In the document, Mr. Dougherty asserted that he had sent his First Data Request to Montezuma on October 26, 2012, by both e-mail and first class mail and that he had followed up with Montezuma with voicemail messages left on two different Montezuma phone lines on October 29, 2012, and again on November 5, 2012. Mr. Dougherty further asserted that he had sent a second e-mail on November 5, 2012, to request compliance with the First Data Request. Mr. Dougherty asserted that on November 20, 2012, he received the first copies of Montezuma's filings in this consolidated matter, which included the November 15, 2012, statement that Montezuma had not received any data requests from Mr. Dougherty. Mr. Dougherty stated that all future Data Requests would be filed in the Consolidated R&F Docket as well as sent to Montezuma by mail and e-mail and, further, that he would also provide Montezuma notice by telephone. Mr. Dougherty also provided notice that he had mailed and e-mailed a Second Data Request to Montezuma on November 28, 2012. Mr. Dougherty also asserted that Montezuma's filing of November 26, 2012, had not included proof of service on Mr. Dougherty, in violation of the Procedural Order of October 29, 2012. Mr. Dougherty also provided notice of a November 13, 2012, YCDS judgment against Montezuma for a zoning violation, which judgment imposed a $100 fine and conditionally imposed a $10,000 civil penalty, to become due if Montezuma were not to cease all uses on the property and return it to vacant land by December 20, 2012. Mr. Dougherty asserted that the parcel in question was the property containing Montezuma's Well No. 4. Mr. Dougherty requested that the Commission order Montezuma to comply immediately with Mr. Dougherty's First Data Request by delivering all records to Mr. Dougherty by December 10, 2012, and further that the

Commission impose appropriate sanctions against Montezuma for violating the October 29 Procedural Order. Mr. Dougherty included certification that the filing had been mailed to Montezuma, but did not indicate that it had been mailed either to Staff or to RUCO.

On December 3, 2012, in the Consolidated R&F Docket, Montezuma re-filed its November 26, 2012, Amendment to Application along with Proof of Service on RUCO and Mr. Dougherty, but not Staff.

Also on December 3, 2012, in the Consolidated R&F Docket, Montezuma filed a Request for Procedural Conference and Additional Rate Case Information. In its filing, Montezuma requested a procedural conference to discuss the Procedural Order of November 8, 2012, due to Montezuma's understanding that "small water companies are not required to submit testimony and in the past have not been required to submit testimony" and its belief that the Procedural Order gave "no information . . . as to the type, nature, and requirements regarding the testimony request." Montezuma's Request included the names and addresses for Mr. Dougherty and RUCO, which was understood to indicate that service had been made upon them.

On December 4, 2012, in the 40-252 Docket, Ms. Olsen filed a copy of an ADEQ AOC-Partial Approval for Montezuma's arsenic treatment facility. The AOC, issued by ADEQ on November 21, 2012, stated that it authorized Montezuma to begin operating the arsenic treatment facility as represented in the approved plan on file with ADEQ. The AOC also stated that the AOC was not applicable for the 30,000-gallon water storage tank per ATC Permit and that Montezuma had until June 11, 2013, to install a 30,000-gallon water storage tank or a new ATC application would be required.

On December 4, 2012, in the 40-252 Docket, Ms. Olsen filed a letter requesting the "withdrawal of [Montezuma's] WIFA loan request and the submittal requirements." The request was disregarded as improperly filed by Ms. Olsen rather than Montezuma's counsel.

On December 4, 2012, in the 40-252 Docket, Ms. Olsen filed a bundle of documents captioned "Approval of Construction for Well #4 Extension." The request was disregarded as improperly filed by Ms. Olsen rather than Montezuma's counsel.

On December 7, 2012, in the Consolidated R&F Docket, a Procedural Order was issued scheduling a procedural conference to be held therein on January 2, 2013; requiring Montezuma, before the procedural conference, to provide as to each portion of Mr. Dougherty's First Data Request and Second Data Request a good faith and complete response or, if Montezuma had a valid legal rationale for doing so, to file an objection explaining the rationale or, in the alternate, to reach an agreement with Mr. Dougherty regarding the information to be provided. The Procedural Order further required Montezuma to thoroughly review the Commission's Rules in A.A.C. Title 14, Chapter 3, Article 1 and to use the Commission's e-Docket function to review direct testimony filed in other water utility cases. The Procedural Order further directed each party to ensure service of documents on each other party and to include proof of service on filings. The Procedural Order also vacated the procedural schedule established in the Procedural Order of November 8, 2012; required Montezuma to make a filing indicating whether Montezuma had provided notice of the February 7, 2013, hearing date; indicated that if Montezuma had provided such notice, a public comment proceeding would be held on that date; and suspended the Commission's time frame to issue a decision in the Consolidated R&F Docket.

On December 14, 2012, in the Consolidated R&F Docket, Montezuma made a filing including a Certificate of Public Notice showing that notice of the February 7, 2013, hearing date had been mailed to each of its customers on December 1, 2012, and an Affidavit of Publication showing that the notice had been published in *The Camp Verde Journal* on December 5, 2012.

On December 14, 2012, in the Consolidated R&F Docket, Mr. Dougherty filed a request to attend the January 2, 2013, procedural conference telephonically, as Mr. Dougherty had made international travel plans, or alternatively, to have the procedural conference postponed to a date no earlier than January 31, 2013. Mr. Dougherty also requested that Montezuma not receive an extension of its discovery response deadline, set at January 2, 2013.

On December 17, 2012, in the Consolidated R&F Docket, a Procedural Order was issued vacating the procedural conference scheduled for January 2, 2013; ordering that a public comment proceeding would convene at the time previously set for hearing on February 7, 2013, and that a

procedural conference be held immediately thereafter; and extending to January 16, 2013, Montezuma's deadline to respond to Mr. Dougherty's discovery requests.

On December 21, 2012, in the Consolidated R&F Docket, Montezuma filed a Request for Additional Time to Respond to ACC Staff's Data Request, stating that Montezuma's accountant had sent an attached letter[34] stating that he would need until January 17, 2013, to respond to Staff data requests.

On January 10, 2013, in the Consolidated R&F Docket, Montezuma filed a Response to John Dougherty Data Request, including a number of attached documents.

On January 14, 2013, in the Consolidated R&F Docket, Mr. Dougherty filed a Motion for Procedural Conference to Resolve Discovery Dispute, stating that Montezuma's Response to John Dougherty Data Request had failed to produce records for the majority of the items sought, providing no valid legal rationale for withholding the records. Mr. Dougherty further stated that his efforts to communicate with Ms. Olsen had been unsuccessful and that Ms. Olsen had refused to pick up from the Rimrock Post Office the certified mail including Mr. Dougherty's Second Data Request. Mr. Dougherty requested that a procedural conference be scheduled to address the discovery issues. Mr. Dougherty also filed a Certificate of Intervenor in Support of Discovery Motion.

On January 14, 2013, in the Consolidated R&F Docket, Mr. Dougherty also filed a document entitled "Motion to Hold Montezuma in Contempt of the Commission; Motion to Bar Montezuma from Expending Ratepayer Funds for Unapproved Capital Leases; Motion to Require Patricia Olsen to Refund Company Payments Made on Unapproved Capital Leases; Motion for Criminal Referral; Motion to Revoke Montezuma's CC&N." Mr. Dougherty requested that Montezuma be held in contempt of the Commission and A.R.S. § 40-424 for violating two Procedural Orders in the 40-252 Docket; that Montezuma be barred from spending any more company funds on the "unapproved Capital leases" for an arsenic treatment building and arsenic treatment system, "entered into by the Company in violation of A.R.S. [§] 40-302(A)"; that Ms. Olsen be required personally to refund Montezuma for all payments made on those leases; that the Commission, under A.R.S. § 40-421(A)-

[34] The letter was printed on plain paper rather than letterhead, with no return address or other contact information shown for the accountant, no signature, and no date.

(B), make a criminal referral to the Attorney General and/or the Yavapai County Attorney for "fraudulent statements to the Commission asserting that Ms. Olsen, as an individual, was entering into the lease agreements"; and that Montezuma's CC&N be revoked "for knowingly deceiving the Commission" as to the entity entering into the lease agreements and the status of the execution of those lease agreements. Mr. Dougherty attached to the filing exhibits including two different sets of executed lease agreements with Nile River, one identifying Ms. Olsen as the lessee and the other identifying Montezuma as the lessee.

On January 14, 2013, in the 40-252 Docket, Mr. Dougherty filed a Motion to Bar Olsen's Submittals and Imposition Of Appropriate Penalties, requesting that Ms. Olsen's filings of December 4, 2012, be rejected as improper in light of the Procedural Order of January 11, 2012; that notice be issued in the 40-252 Docket confirming that they will not be considered; and that Ms. Olsen be sanctioned for violating the January 11, 2012, Procedural Order, found in Contempt of the Commission, and penalized under A.R.S. § 40-424.

On January 15, 2013, in the Consolidated R&F Docket, Mr. Dougherty filed a Notice of Filing Third Data Request with Montezuma, which included as an attachment a copy of a UCC Financing Statement filing made with the Secretary of State on May 9, 2012, showing for a lease dated April 3, 2012, that the debtor was Montezuma, the Secured Party/Lessor was Wells Fargo Capital Finance, LLC, and the Assignor was Financial Pacific Leasing, LLC.

On January 15, 2013, in the Consolidated R&F Docket, Mr. Dougherty also filed a "Notice of Filing Additional Exhibit in Support of Intervener's Motions Docketed on January 14, 2013; Motion to Require Company to Submit Capital Leases to Commission for Approval." In the document, Mr. Dougherty asserted that Montezuma and its counsel had violated Procedural Orders and submitted false statements in an April 27, 2012, Legal Brief. Mr. Dougherty included again the UCC Financing Statement filing included with his Third Data Request, as well as another UCC Financing Statement filing made with the Secretary of State on August 31, 2012, showing Montezuma as debtor, Nile River as the Secured Party/Lessor, and an arsenic building plant, with electrical connection, as collateral.

On January 23, 2013, in the Consolidated R&F Docket, Montezuma filed a "Response to John Dougherty Data Request – Additional Information," including a copy of each public records request submitted to ADEQ by Mr. Dougherty in 2012, along with a copy of each Request to Review Public Records Form created with a request and describing the materials released to Mr. Dougherty for review.

On January 28, 2013, in the Consolidated R&F Docket, Todd C. Wiley, Fennemore Craig, entered a Notice of Appearance as counsel for Montezuma. The Notice stated that Ms. Olsen would be unavailable for the procedural conference scheduled for February 7, 2013, and included a copy of a subpoena issued January 18, 2013, which ordered Ms. Olsen to appear as a witness for the prosecution in the Buddeke criminal trial on February 6, 2013.

On January 30, 2013, in the Consolidated R&F Docket, Mr. Dougherty filed a Motion to Reschedule Feb. 7 Procedural Conference, requesting for the procedural conference to be rescheduled because he was to serve as a defense witness in the Buddeke criminal trial scheduled to begin on February 5, 2013, and to last approximately three to four days.

On January 31, 2013, in the Consolidated R&F Docket, a Procedural Order was issued vacating the procedural conference scheduled for February 7, 2013, and scheduling a procedural conference to take place on February 25, 2013. The Procedural Order further required the parties to be prepared to make proposals regarding a new procedural schedule and to discuss how the 40-252 Docket and Complaint Docket should progress toward resolution and whether either or both should be consolidated with the Consolidated R&F Docket or administratively closed.

On February 1, 2013, a Procedural Order was issued in the 40-252 Docket stating that the Olsen filings had been improper because Montezuma was represented by counsel; scheduling a joint procedural conference to be held on February 25, 2013, for the 40-252 Docket, the Complaint Docket, and the Consolidated R&F Docket; and denying Mr. Dougherty's Motion to the extent that it requested initiation of a contempt and penalty proceeding under A.R.S. § 40-424.

On February 1, 2013, a Procedural Order was issued in the Complaint Docket scheduling a joint procedural conference to be held on February 25, 2013, to discuss the procedural schedule for the Consolidated R&F Docket, how the Complaint Docket and the 40-252 Docket should progress

toward resolution; and whether any of the dockets should be consolidated with the Consolidated R&F Docket or administratively closed.

On February 7, 2013, in the Consolidated R&F Docket, a public comment proceeding was held at the Commission's offices in Phoenix. Commissioner Brenda Burns attended, and Montezuma, RUCO, and Staff appeared through counsel. One individual, an owner of rental properties in Montezuma's service area and served by Montezuma, provided comment, stating that Montezuma's requested rate increase was too high, that the proposed rate increase would decrease the value of his rental properties, and that he would prefer to receive service from AWC.

On February 8, 2013, in the Consolidated R&F Docket, a comment opposing Montezuma's requested rate increase was filed, citing Montezuma's failure to put in an arsenic treatment plant years earlier and expressing displeasure with Montezuma's treatment of its customers.

On February 12, 2013, in the Complaint Docket, Mr. Dougherty filed a Motion to Add Allegation XVII.

On February 19, 2013, in the Consolidated R&F Docket, another comment opposing Montezuma's requested rate increase was filed, with the commenter complaining about Montezuma's failure to put in an arsenic treatment plant years earlier and about Montezuma's treatment of its customers.

On February 21, 2013, in the Complaint Docket, Mr. Dougherty filed Exhibits 8 & 9 in Support of Allegation XVII; Submission of Newspaper Article and Editorial on Buddeke Acquittal; Correction to Paragraphs 15 and 16 in Statement of Facts in Support of Allegation XVII Docketed February 12, 2013; Correction to Paragraph C under Allegation XVII Docketed February 12, 2013.

On February 25, 2013, in the Complaint Docket, Mr. Dougherty filed Exhibit 10 in Support of Allegation XVII.

On February 25, 2013, a joint procedural conference was held in the 40-252 Docket, the Complaint Docket, and the Consolidated R&F Docket. Montezuma stated that the arsenic treatment facility was operating at Well No. 1, with the water meeting ADEQ standards; that Well No. 4 was not being operated; and that Montezuma was using a condemnation process to get an easement so that it could meet Yavapai County requirements. Mr. Dougherty stated that Yavapai County would

be issuing a Notice of Noncompliance because the site for Well No. 4 had not yet been cleared as ordered. Montezuma identified the lease with Nile River and the lease with Financial Pacific as the genuine leases and was unwilling to characterize them as capital leases. Mr. Dougherty stated that Montezuma had committed fraud with its prior lease filings because the leases are capital leases and were signed on March 22, 2012, with the UCC filing made on April 3, 2012. Mr. Dougherty also stated that Ms. Olsen had made a filing on October 25, 2012, and had failed to provide service of the filing on the other parties. Mr. Dougherty's Motion to Add Allegation XVII to his Complaint was discussed but not ruled upon. Mr. Dougherty stated that he would file an Amended Complaint by the end of the week, Montezuma was directed to file a response within 20 days, and Staff was also directed to file a response. The parties were told that there would be a hearing in the Complaint Docket and that prefiled testimony would be required in the Consolidated R&F Docket.

On February 26, 2013, a Procedural Order was issued consolidating for all purposes going forward the Consolidated R&F Docket, the Complaint Docket, and the 40-252 Docket into this matter; scheduling a hearing to commence on May 3, 2013; scheduling a prehearing conference for April 29, 2013; and establishing notice and filing requirements and deadlines. *Inter alia*, the Procedural Order required Mr. Dougherty to file, by March 1, 2013, an Amended Complaint intended to replace his prior complaint as modified to date. The Procedural Order also notified Montezuma that it had the burden of proof as to the requests made by it in the Consolidated R&F Docket and the 40-252 Docket and notified Mr. Dougherty that he had the burden of proof as to the allegations made by him in the Complaint Docket.

On February 27, 2013, Mr. Dougherty filed an Amended Formal Complaint; Motion to Add Allegation XVII. Therein, Mr. Dougherty asserted that Montezuma had admitted to the following Allegations from the original Complaint, in whole or in part, and Mr. Dougherty incorporated them by reference, with Montezuma's admissions, in the Amended Complaint: Allegations I, IV, VII, XI, XII, XIII, and XV. Mr. Dougherty withdrew Allegations III, V, VI, and XVI without prejudice and withdrew Allegations VII, IX, XIII, and XIV with prejudice. Mr. Dougherty then recited anew Allegations I, II, VIII, and X and moved for five claims to be accepted as Allegation XVII.

On February 28, 2013, a Procedural Order was issued correcting a typographical error contained in the notice language in the Procedural Order issued on February 26, 2013, and directing Montezuma to provide notice using the corrected language.

On February 28, 2013, Mr. Dougherty filed corrections to his Amended Complaint, clarifying that Allegation VII was not incorporated by reference in the Amended Complaint.

On March 1, 2013, Mr. Dougherty filed two documents described as sworn affidavits from Nile River member John Torbenson and administrative assistant Robin L. Richards.

On March 6, 2013, counsel for Montezuma filed Notice of Change of Firm Address.

On March 7, 2013, a Procedural Order was issued granting Mr. Dougherty's motion to include Allegation XVII in his Amended Complaint.

On March 12, 2013, RUCO filed RUCO's Notice of Withdrawal from this matter.

On March 15, 2013, Montezuma filed a Joint Request for Extension, on behalf of itself and Staff, stating that Montezuma intended to make amended rate case filings related to financing approvals and to update certain filings in the rate case and requesting that the hearing date and testimony filing deadlines be extended by 30-45 days. Montezuma stated that Mr. Dougherty had been consulted by Staff and was opposed to the extension.

On March 18, 2013, Mr. Dougherty filed a Motion to Deny RUCO's Motion to Withdraw as Intervener, stating that Montezuma's rate case required RUCO's full participation.

On March 18, 2013, Montezuma filed an Answer to Amended Formal Complaint, identifying Allegations I, II, IV, VII, VIII, X, XI, XII, XV, and XVII as those remaining at issue; asserting that the other Allegations should be dismissed; and providing Montezuma's responses to the remaining Allegations.

On March 21, 2013, Mr. Dougherty filed a "Notice of filing additional exhibits; Response to Staff's and Company's Joint Filing to Extend Schedule; Motion to Maintain Complaint portion of Docket under Current Hearing Schedule." Mr. Dougherty stated that he was providing a replacement affidavit for Robin Richards, along with other documents; objected to the joint motion for an extension; and moved for the hearing schedule previously established to be retained for the Amended Formal Complaint portion of this matter.

On March 21, 2013, a Procedural Order was issued granting RUCO's withdrawal from this matter; modifying the prior procedural schedule to include a hearing commencing on June 20, 2013, along with other corresponding dates and requirements; vacating the hearing dates of May 6-9, 2013; requiring Montezuma to make a filing regarding whether public notice had been provided regarding the May 3, 2013, hearing date; and establishing requirements to apply if Montezuma had not yet provided public notice.

On April 3, 2013, Montezuma filed Notice that public notice as prescribed in the February Procedural Orders had been sent to customers via a billing insert and had been published in the *Camp Verde Journal* on March 13, 2013. Montezuma further stated that after the March 21, 2013, Procedural Order, Montezuma had sent revised public notice in customer billings sent out on March 28, 2013, and that it was in the process of having revised notice published in a local newspaper.

On April 3, 2013, Montezuma also filed a Motion to Compel, asserting that Mr. Dougherty had refused to answer a number of Montezuma's data requests and requesting that he be compelled to do so and, that if he failed to respond and/or refused to produce requested materials, Mr. Dougherty be precluded from presenting any testimony or evidence in this matter. Montezuma further requested that any oral argument on the motion be scheduled as quickly as possible.

On April 4, 2013, a Procedural Order was issued explaining that counsel for Montezuma had failed to include a separate statement of moving counsel certifying that counsel had been unable to satisfactorily resolve the disputed discovery matter after personal consultation and good faith efforts to do so; directing counsel for Montezuma to engage in such personal consultation and good faith efforts to resolve the current and any other discovery dispute before filing another Motion to Compel; directing Mr. Dougherty, as to each portion of Montezuma's first data request, to provide a good faith and complete response or, if he had a valid legal rationale for doing so, to file an objection explaining the legal rationale; requiring the parties to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy; instructing the parties that they could contact the Commission's Hearing Division to request a date for a procedural conference, in the alternative to filing a written discovery motion; and ordering that a public comment proceeding would be held on May 3, 2013, at the time previously set for hearing.

On April 5, 2013, Mr. Dougherty filed a Motion to Deny Company's Motion to Compel; Motion for Protective Order, as well as a Certification of Intervenor/Complainant in Support of Motion for Protective Order. Mr. Dougherty opposed Montezuma's Motion to Compel and sought a protective order to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

On April 8, 2013, a Procedural Order was issued scheduling a procedural conference to be held on April 15, 2013, and directing Montezuma and Mr. Dougherty to be prepared to support their positions as to the discovery dispute.

On April 12, 2013, Montezuma filed Notice of Filing Financing Applications, including three separate financing applications: Exhibit A, pertaining to a $108,000 promissory note for a WIFA loan to cover the costs of four 20,000-gallon storage tanks; Exhibit B, pertaining to an $8,000 promissory note for a lease with Nile River, dated March 22, 2012, to cover the costs for an arsenic treatment building, for which a delivery and acceptance certificate was included showing that Ms. Olsen had signed on May 10, 2012; and Exhibit C, pertaining to a $38,000 promissory note for a lease with Financial Pacific Leasing, dated May 2, 2012, to cover the costs of an arsenic treatment facility, and for which a Guarantee and Delivery and Acceptance Authorization were signed on March 22, 2012. Montezuma requested that the financing applications be reviewed and approved in the pending rate case and asserted that it did not believe that the lease with Nile River was a capital lease.

On April 15, 2013, Mr. Dougherty filed a Motion for Partial Summary Judgment Allegation XVII Amended Formal Complaint, requesting summary judgment as to Allegation XVII(A), (B), and (C) and asserting that the requested relief could be dispositive as to the Complaint in its entirety. Mr. Dougherty requested that Montezuma and Ms. Olsen be found in contempt of the Commission in violation of A.R.S. § 40-424, be found to have violated A.R.S. § 40-425 by docketing three fraudulent leases, and be found to have violated A.R.S. §§ 40-301 and 40-302 by entering into capital leases without Commission authorization; that the Commission make a criminal referral to the Attorney General or County Attorney under A.R.S. § 40-421(A) and (B) for the "fraud violations" described; that Montezuma's CC&N be revoked; and that Mr. Dougherty be granted such other and

further relief as the Commission deemed just, equitable, or proper. Mr. Dougherty also filed a Statement of Facts in Support of Intervenor/Complainant's Motion for Partial Summary Judgment, including eight attached exhibits.

In addition, on April 15, 2013, Mr. Dougherty filed a Motion to Bar Rate Application, asserting that Montezuma's application violated A.R.S. §§ 40-301 and 40-302 and thus should be barred because Montezuma had already entered into capital lease agreements and was seeking retroactive approval for long-term debt (the leases), which Mr. Dougherty asserted could not legally be granted. Mr. Dougherty included in his motion filing a Memorandum of Points and Authorities with five attached exhibits.

On April 15, 2013, a procedural conference in this matter was held at the Commission's offices in Phoenix, with Montezuma and Staff appearing through counsel and Mr. Dougherty appearing *pro se*. It was determined that Montezuma would respond to the Motion for Partial Summary Judgment by May 15, 2013, and to the Motion to Bar Rate Application by May 3, 2013. Montezuma and Mr. Dougherty reported that they had made no progress toward resolving their discovery dispute and further stated that they did not believe additional discussions would help them to resolve the dispute themselves. The disputed discovery requests were discussed at length, with both Montezuma and Mr. Dougherty providing their positions as to each. Montezuma and Mr. Dougherty were able to reach agreement as to some of the disputed data requests, a number of which were withdrawn or narrowed by Montezuma, and rulings were made from the bench on most of the remaining disputed data requests. One disputed data request (MRWC 1.9) was discussed at length, with no resolution reached or ruling made at the procedural conference.

On April 24, 2013, Montezuma filed an Affidavit of Publication showing that notice of this matter and the June 20, 2013, hearing date had been published in the *Camp Verde Journal* on April 10, 2013; an Affidavit of Publication showing that notice of the May 3, 2013, hearing date had been published in the *Camp Verde Journal* on March 13, 2013; and a Certificate of Notice stating that public notices regarding the requested financings had been mailed to customers along with their billing statements on April 12, 2013.

On April 25, 2013, a Procedural Order was issued analyzing MRWC 1.9 and finding that Montezuma had failed to establish that MRWC 1.9 met the threshold requirement of relevancy and, even assuming that it had, Montezuma had not established either a substantial need for the information or that substantially equivalent information was unavailable to Montezuma without undue hardship. It was ordered that the information requested in MRWC 1.9 was not relevant to this matter and that Mr. Dougherty was not required to provide any additional response to MRWC 1.9.

On April 29, 2013, Mr. Dougherty filed a Notice of Montezuma's Violation of Procedural Orders; Motion for Revised Public Notice of a Rate Hearing. Mr. Dougherty asserted that Montezuma had failed to provide a concise, accurate, and complete disclosure of its rate application in the Notice of Rate Hearing and requested that the Commission issue a revised Notice of Rate Hearing to include, *inter alia*, the true and complete Nile River and Financial Pacific leases, and require Montezuma to publish the revised Notice and to send it to its customers via mail.

On May 3, 2013, Montezuma filed a Response to Motion to Bar Rate Application, asserting that it should be denied because A.R.S. §§ 40-301 and 40-302 do not preclude the Commission from retroactively approving a capital lease and because the Commission has routinely approved financial transactions retroactively. Montezuma further asserted that Mr. Dougherty had filed more than 40 motions in this matter, in an "attempt to bury the Company in motions and legal filings."

On May 3, 2013, a public comment proceeding was held at the Commission's offices in Phoenix, with Montezuma and Staff appearing through counsel. The hearing date of June 20, 2013, was announced. No members of the public appeared to provide comment.

On May 15, 2013, Montezuma filed its Response to Motion for Partial Summary Judgment, asserting that Allegation XVII was not ripe for summary judgment and that Montezuma contested some of the factual allegations made by Mr. Dougherty and, further, making a number of arguments as to the lack of legal bases for granting summary judgment and the inappropriateness of Mr. Dougherty's requested remedies. Montezuma included, in support, an unsworn declaration by Ms. Olsen. Montezuma also filed a Response to Statement of Facts, disputing a number of the statements made by Mr. Dougherty.

On May 21, 2013, Staff filed a Request for Filing Extension, requesting a one-day extension to file its Staff Report. Staff asserted that Montezuma had no objection to the request, but that Staff had not yet received a response from Mr. Dougherty.

On May 22, 2013, Mr. Dougherty filed his Direct Testimony.

Also on May 22, 2013, a Procedural Order was issued extending the filing deadline for Direct Testimony and Exhibits to May 24, 2013.[35]

On May 24, 2013, a Procedural Order was issued discussing and resolving three separate motions filed by Mr. Dougherty: the Motion for Partial Summary Judgment as to Allegation XVII, which was denied due to the existence of genuine issues of material fact as to the assertions in Allegation XVII; the Motion to Bar Rate Application, which was interpreted to be a legal brief arguing against retroactive Commission approval of the financing agreements, and premature, rather than a request to bar the Commission's consideration of the financing agreements, as Mr. Dougherty apparently desired to litigate the nature, validity, and legality of the various leases; and the Motion for Revised Public Notice of a Rate Hearing, which was denied as without merit due to the notices that had already been provided in this matter.[36]

On May 24, 2013, Montezuma filed Ms. Olsen's Direct Testimony, and Staff filed Gerald Becker's Direct Testimony.

On June 3, 2013, Mr. Dougherty filed a Motion to Order Staff to File Response to Formal Complaint; Motion to Order Staff to Determine Whether March 22, 2012, Leases Are Capital Leases. Mr. Dougherty requested that Staff be required to file such response and analysis by June 10, 2013.

On June 4, 2013, Staff filed a Staff Response to Motion to Order Staff to File Response to Formal Complaint, requesting that Mr. Dougherty's Motion be denied because the Procedural Order of February 26, 2013, had directed that Staff was not required to file a response to the Amended Complaint.

On June 6, 2013, Montezuma filed Ms. Olsen's Rebuttal Testimony.

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[35] Although Mr. Dougherty's Direct Testimony was filed approximately 1.5 hours before the Procedural Order was issued, the Procedural Order was issued before a copy of Mr. Dougherty's Direct Testimony had been received in the Hearing Division.

[36] The Procedural Order noted that the Motion for Revised Notice had been deemed denied as of May 20, 2013, but was dealt with substantively in the Procedural Order for the sake of clarity.

On June 6, 2013, Mr. Dougherty filed a Motion to Withdraw Motion to Order Staff to File Response to Formal Complaint.

On June 6, 2013, Mr. Dougherty also filed his Responsive Testimony.

On June 6, 2013, Staff filed Mr. Becker's Responsive Testimony.

On June 10, 2013, Mr. Dougherty filed a Notice of Filing Supplemental Exhibits, including several documents to supplement the Exhibit 24 included with his Responsive Testimony.

On June 14, 2013, Mr. Dougherty filed a Second Notice of Filing Supplemental Exhibits, including a new Exhibit No. 26 in support of his Direct Testimony and Responsive Testimony.

On June 14, 2013, Montezuma filed Montezuma Rimrock Water Company Objections and Motion to Strike, objecting to specified portions of Mr. Dougherty's Direct Testimony and Responsive Testimony as legal argument, legal analysis, and opinion testimony offered without proper qualifications or personal knowledge and requesting that the specified portions be stricken.

On June 14, 2013, the prehearing conference in this matter was held, with Montezuma and Staff appearing through counsel and Mr. Dougherty appearing *pro se*. Montezuma's Motion to Strike was discussed, and Mr. Dougherty agreed to have a specific portion of his Direct Testimony stricken as legal argument. Mr. Dougherty's subpoena for Jeffrey Michlik was quashed, subject to reconsideration after other witness testimony had been presented. Several other subpoenas issued at Mr. Dougherty's request were discussed, without being quashed. Additionally, the parties were given instructions concerning documents to provide for hearing and witness summaries, and the order of witnesses was established.

On June 17, 2013, Mr. Dougherty filed a Notice of Filing Subpoenaed Witnesses, Documents and Testimony.

On June 18, 2013, Mr. Dougherty filed a Motion to Reschedule Witness Appearances, stating that John Torbenson and Robin Richards would be unavailable on June 24, 2013, and requesting that their testimony be offered on June 26, 2013, instead. Mr. Dougherty asserted that Montezuma and Staff had no objection to the change.

On June 18, 2013, a Procedural Order was issued granting Mr. Dougherty's Motion to Reschedule Witness Appearances.

On June 18, 2013, Assistant Attorney General John T. Hestand filed a Notice of Appearance, stating that he would appear on behalf of ADEQ in this matter.

The evidentiary hearing in this matter was held before a duly authorized Administrative Law Judge of the Commission, at the Commission's offices in Phoenix, Arizona, on June 20, 21, 24, 25, and 26, 2013. Montezuma and Staff appeared through counsel, and Mr. Dougherty appeared *pro se*. Testimony was provided by Ms. Olsen; Vivian Burns, Environmental Program Specialist/Case Manager for ADEQ; John Campbell, Montezuma's accountant; Mr. Dougherty; Marlin Scott, Jr., Staff Utilities Engineer; Gerald Becker, Staff Executive Consultant; John Torbenson, owner of Odyssey and Nile River; and Robin Richards, former administrator assistant/leasing administrator for Odyssey.

On June 20, 2013, a letter from John Campbell was filed, in which Mr. Campbell requested that his subpoena be quashed, as he had a scheduling conflict on June 24, 2013. Mr. Campbell also made a number of assertions as to his accounting activities on behalf of Montezuma.

On June 28, 2013, a letter from Mr. Campbell was docketed, in which Mr. Campbell made assertions concerning Montezuma's and Ms. Olsen's tax returns, which he stated were intended "to add to the hearing record."

On July 2, 2013, a letter was filed from Tim Hardy, in which Mr. Hardy made assertions regarding interactions between Mr. Dougherty and Ms. Olsen witnessed in April 2011 while Mr. Hardy was part of a crew installing a line between Montezuma's Well No. 1 and Well No. 4.

On July 2, 2013, a letter was filed from Don Barnes, in which Mr. Barnes described Ms. Olsen's account of May 2012 contact between Mr. Dougherty and Ms. Olsen, and Mr. Barnes expressed adverse opinions regarding Mr. Dougherty's character and behavior.

On July 2, 2013, a letter was filed from Rose Mary Barnes, who described herself as the President, Vice President, Secretary, and Treasurer of MEPOA since June 2010. Ms. Barnes asserted that MEPOA had collected no membership dues since 2009, that it had approximately $3,500 in its accounts, and that it was not in a position to purchase Montezuma.

On July 8, 2013, Staff filed Staff's Late Filed Exhibit S-5, which included several revised ratemaking schedules.

On August 30, 2013, Montezuma filed its Closing Brief, Mr. Dougherty filed his Closing Brief, and Staff filed its Opening Brief.

On September 20, 2013, Staff filed a Notice of Filing Staff's Reply, stating that Staff stood by the arguments provided in its Opening Brief on all issues regarding the Rate Docket, the Complaint Docket, and the three questions posed by the Administrative Law Judge. Staff characterized Mr. Dougherty's Closing Brief as addressing only the three questions posed and stated that Staff reserved the right to file a supplemental brief if Mr. Dougherty's reply brief addressed issues and arguments not addressed in his Closing Brief.

Also on September 20, 2013, Montezuma filed its Reply Brief, and Mr. Dougherty filed his Reply Brief.

On September 26, 2013, Mr. Dougherty filed corrections to his Reply Brief.

On October 4, 2013, Staff filed Notice of Filing Staff's Supplemental Reply Brief, which Staff described as "extraordinary and owing solely to Mr. Dougherty's choice to file a concatenated initial brief and then file a comprehensive brief only upon reply." Staff stated that if its Supplemental Reply Brief were not accepted, Staff alternatively joined in Montezuma's assertion that Mr. Dougherty had waived his ability to argue issues that he failed to assert in his initial brief.

On October 29, 2013, Mr. Dougherty filed a document entitled "Notice of Legal Remedy Available to Interim Manager," in which Mr. Dougherty stated that he was bringing to the Commission's attention the provisions of A.R.S. § 49-355(B)(5) and (C), regarding WIFA's authority, upon Commission recommendation, to approve a grant to a small water system's interim operator or interim manager for the purpose of repairing or rehabilitating the small water system to correct or avoid an interruption in water service. Mr. Dougherty included a copy of the statute.

On December 27, 2013, Montezuma filed a Notice of Filing Compliance Status Report, stating that Montezuma was in compliance with ADEQ's Administrative Order relating to arsenic levels and testing and including a copy of a December 19, 2013, ADEQ Drinking Water Compliance Status Report[37] showing that Montezuma had no major deficiencies and that it was in compliance

[37] Official notice is taken of this document.

with and delivering water meeting the water quality standards required by 40 C.F.R. 141 and A.A.C. Title 18, Chapter 4. The ADEQ Report also stated that Montezuma had a minor deficiency for inadequate water storage and that it needed a storage tank.

On January 9, 2014, Ms. Brunner filed a comment expressing displeasure that the rate case had not yet been resolved and essentially accusing the Commission of disrupting Montezuma's water supply by not yet providing it a rate increase to allow it to connect Well No. 4 to its system.

On March 7, 2014, Montezuma filed a Request for Emergency/Interim Relief, asserting that Montezuma is in financial distress, that Montezuma lacks sufficient revenue to make the lease payments for its arsenic treatment facility, and that Financial Pacific and Nile River have requested voluntary surrender of the arsenic treatment facility for nonpayment. The filing did not include any documentation supporting Montezuma's assertions as to Financial Pacific and Nile River.

On March 11, 2014, Mr. Dougherty filed a Response to Montezuma's Motion for Emergency/Interim Relief; Motion to Install Interim Manager, opposing Montezuma's Request as frivolous and unsupported by law and requesting that an interim manager be appointed.

To date, no filing has been made in the docket to indicate that the County has issued a permit allowing Montezuma to use the property containing Well No. 4 for commercial purposes.

III. The 40-252 Requests

As described above, the Commission opened the 40-252 Docket for the purpose of determining whether to modify Decision No. 71317 concerning financing approval and related provisions.

On brief, Montezuma asserts that the 40-252 Docket should be closed because all of the remaining issues in dispute can be resolved as part of the current rate case and/or Mr. Dougherty's complaint proceeding.

Neither Staff nor Mr. Dougherty addressed in their briefs the requests made in the 40-252 Docket. In prefiled testimony, however, Staff recommended that Montezuma's request to revise Decision No. 71317 to authorize Montezuma to borrow up to $165,000 from a source other than WIFA be denied and, further, that Montezuma's authority to incur debt up to $165,000 from WIFA as approved in Decision No. 71317 be revoked. (Ex. S-1 at 27.) Additionally, Staff recommended

that Montezuma be relieved of the requirements therein for Montezuma to file an ADEQ AOC for Well No. 4 and an arsenic remediation surcharge, as circumstances have rendered them outdated in nature. (*Id.* at 28.)

Montezuma no longer seeks modification of Decision No. 71317 to authorize alternate financing of the arsenic treatment system facilities, and we agree that it is reasonable and appropriate in this matter not to take any action to modify Decision No. 71317 to authorize alternate financing of any kind. However, in an abundance of caution, we will adopt a provision declaring that the WIFA debt authorization approved in Decision No. 71317 has expired, that Montezuma is no longer authorized to apply for an arsenic remediation surcharge as provided in that Decision, and that Montezuma is no longer required to file an AOC for Well No. 4 or for the arsenic treatment project described in that Decision.

IV. The Financing Requests

Montezuma has filed applications requesting approval for six different financings, each of which is discussed below.

A. Rask Docket

In The Rask Docket, Montezuma requested approval to enter into a loan agreement dated April 20, 2012, in which Montezuma promised to pay Rask Construction the amount of $68,592, with interest from May 1, 2012, at a rate of 6 percent per year, with monthly payments of $1,326.08 to be made beginning on April 20, 2012, and ending on April 20, 2017, for installation of the water line connecting Well No. 4 to Well No. 1. (Ex. C-75.) The loan agreement filed in the Rask Docket was not signed and did not include a signature page consistent with the loan agreements filed by Montezuma in the other dockets. (*See id.*; Ex. C-76; Ex. C-77.) As an attachment to the Rask Docket financing application, Montezuma included a proposal from Rask Construction dated April 12, 2012, and signed as accepted by Ms. Olsen on April 20, 2012, showing that Rask Construction proposed to complete the following work items:

> #2 Provide the necessary equipment & labor to install the Water line from the well on tieman to well #1 on towers.
> Pressure test & sanitize the new line.

#3 Connecting of the transfer line by others.[38]

The proposal as submitted by Montezuma in the Rask Docket bears signs of alteration to eliminate the first item in the list of work--unevenness in the line preceding item #2, traces of text visible above the line preceding item #2, and the fact that the first item listed is labeled as #2.[39] (*See* Ex. C-75.) The proposal shows that Rask proposed to charge $68,592 for the work and that Rask had already received $7,000, leaving a balance of $61,592. (*Id.*) The proposal does not include a breakdown of the costs per item. (*Id.*)

In her prefiled direct testimony, Ms. Olsen stated that it would be in the best interests of Montezuma and its ratepayers for the costs associated with Well No. 4 to be included in this rate case but that, if the Commission were to exclude those costs due to Well No. 4's currently not being used, Montezuma would reserve the right to seek recovery in a future rate case once Well No. 4 is being used. (Ex. A-2 at 23.)

At hearing, Ms. Olsen testified that the work by Rask Construction was actually completed on April 18, 2011, based upon an earlier proposal, the location of which Ms. Olsen did not know. (Tr. at 224-25.) Ms. Olsen stated that she had requested another proposal from Mr. Rask and that this proposal is the one submitted to the Commission. (Tr. at 225.) Ms. Olsen further stated that she had paid Rask Construction $7,000 out of her own personal funds; that no Montezuma funds had been expended for the work; that no encumbrance of Montezuma's property had been created because the loan agreement was not signed; and that she had drawn up the loan agreement essentially to show that Montezuma had an account payable to Rask Construction for approximately $61,000. (See Tr. at 225-26, 529-30.) Ms. Olsen confirmed that the prior bid from Rask Construction, in the amount of $42,870, had been obtained in 2009 and included in the WIFA loan request approved in Decision No. 71317. (Tr. at 226-27.) Ms. Olsen attributed the approximately $25,000 increase in the cost of the transmission line work to prices increasing over time, Rask Construction's having completed the line in a shorter period of time with a larger crew than originally planned and overtime, the need to complete the line because Mr. Dougherty had filed for a Temporary Restraining Order to stop

[38] Ex. C-75.

[39] Testimony was not elicited about this at hearing, although Ms. Olsen was asked if the pressure tank at issue in the Arias Docket had been purchased from Mr. Rask. (*See* Tr. at 222-26.)

construction of the line, and the incident in which Mr. Buddeke allegedly threatened Ms. Olsen and workers from Rask Construction with a shotgun. (Tr. at 227-32.) When asked whether the transmission line actually needed to be completed quickly because the ATC for it was about to expire, Ms. Olsen stated that she could not recall. (Tr. at 230-31.)

Mr. Dougherty opposed the Rask Docket financing request in his prefiled testimony and at hearing, but did not directly address it in his briefs. (*See, e.g.,* Ex. C-93 at 13.)

In prefiled direct testimony, Mr. Becker characterized the Rask Docket financing request as Montezuma's seeking retroactive authority to borrow $68,592 from Rask Construction. (Ex. S-1 at 16.) Staff recommended denial of the request because Well No. 4's status renders the transmission line between Well No. 4 and Well No. 1 neither used nor useful and, in addition, the transmission line is not connected to the water system. (Ex. S-1 at 16, att. A at 2, 20.) Staff maintained this position at hearing and did not discuss the Rask Docket financing request in its brief.

At hearing, counsel for Montezuma asserted that Montezuma had withdrawn the financing request from the Rask Docket and, when questioned regarding that assertion, stated that Montezuma's accepting Staff's recommendation for denial was the "functional equivalent" of having withdrawn the Rask Docket financing application. (*See* Tr. at 1036-37.)

We find that the transmission line resulting in the debt represented by the Rask Docket financing application is neither used nor useful and that it would be inappropriate for the Commission to approve such debt at this time. Additionally, because the proposal from Rask Construction, as submitted to the Commission with the Rask Docket financing application, was altered to omit a line item, we direct Montezuma that any future request to obtain recovery of the costs of the transmission line must be accompanied by documentation, in the form of a detailed invoice, created by Rask Construction, breaking down the costs for labor, materials, and all other items and an accompanying affidavit from Mr. Rask attesting to the accuracy and completeness of the invoice.

B. Olsen Docket

In the Olsen Docket, Montezuma requested approval to incur the debt resulting from a loan agreement in which Montezuma promised to pay Ms. Olsen the amount of $21,377, with interest at a rate of 6 percent per year, through monthly payments of $413.28 beginning on August 30, 2011, and

ending on April 30, 2016, for the purchase of the Well No. 4 site and the company vehicle. (Ex. C-76.) Ms. Olsen signed the loan agreement as both borrower and lender on August 30, 2011. (*Id.*) The Olsen Docket financing application does not include any supporting documentation for either the purchase of the Well No. 4 site or the company vehicle or any payments made by Ms. Olsen personally as to either of these. (*See id.*)

In her direct testimony, Ms. Olsen stated that the loan agreement in the Olsen Docket was "for purchase of assets relating to Well No. 4" and that she used her own "personal, separate, and private funds to pay the final debt . . . on the assets and property." (Ex. A-2 at 23.) Ms. Olsen acknowledged that Well No. 4 is not in use and stated that if the Commission were not to approve the loan agreement in the Olsen Docket in this matter, Montezuma reserved the right to seek recovery in a future rate case once Well No. 4 was being used. (*Id.*) At hearing, Ms. Olsen stated that there was no loan agreement in effect between herself and Montezuma, that she created the loan agreement document to memorialize the money owed to her by Montezuma, that none of Montezuma's assets were encumbered as a result of her purchasing the Well No. 4 site, and that Montezuma has not made any payments to her for the Well No. 4 site. (Tr. at 524-26.) Regarding the PT Cruiser, Ms. Olsen testified at hearing that she personally had purchased the vehicle, that the vehicle had been titled to her until the lien on it was released, that the vehicle was used "99 percent" for Montezuma business, and that the vehicle's title was transferred to Montezuma after the lien on it was released. (Tr. at 526-28.) Ms. Olsen also testified that some of the loan payments on the vehicle had been made by Montezuma. (Tr. at 403, 528.) Ms. Olsen acknowledged that Staff had recommended that the vehicle be included in rate base. (*Id.*)

In its briefs, Montezuma states that the financing application from the Olsen Docket is "no longer at issue because Well No. 4 is not currently being used for utility service and the Company is not seeking financing approval of the . . . Well No. 4 property." (Montezuma Brief at 1; Montezuma Reply Brief at 18 n.58.)

In his prefiled responsive testimony, Mr. Dougherty opposed approval of the Olsen Docket financing, asserting that Montezuma's ratepayers should not be required to pay for the personal vehicle Ms. Olsen uses to commute approximately 50 miles between her home in Flagstaff and the

system in Rimrock, when the system's service area is less than 2/3 of a square mile in size, and that the vehicle also should not be included in rate base. (Ex. C-93 at 13.) Mr. Dougherty also asserted that the financing should not be approved because Well No. 4 is not used or useful due to the lack of a valid use permit. (*Id.*) In his brief, Mr. Dougherty continues to oppose the financing request in the Olsen Docket, asserting that Ms. Olsen has already been repaid $20,647 by Montezuma for these assets through draws she has taken from the company, as reflected in the long-term debt balances included in Montezuma's annual reports to the Commission and discussed in Mr. Campbell's testimony. (*See* Dougherty Brief at 6-12, 13-15.)

According to Staff, the Olsen Docket financing application requested reimbursement of $16,758 used to pay for the site for Well No. 4 and $6,056 used to purchase a 2008 Chrysler PT Cruiser as a company vehicle. (Ex. S-1 at 17-18, att. A at 20.) Staff visited the site for Well No. 4 and determined that all structures other than Well No. 4 itself had been removed, as ordered by the County, rendering the site neither used nor useful. (Ex. S-1 at 17, att. A at 20.) As a result, Staff determined that incurring debt to purchase the well site was neither reasonable nor appropriate and recommended denial as to that portion of the request. (Ex. S-1 at 17, ex. A at 20.) Regarding the vehicle, Staff stated that although purchase of the company vehicle was appropriate, the vehicle had been added to Montezuma's Utility Plant in Service in 2010 at an original cost of $11,180. (Ex. S-1 at 17-18.) Because the vehicle was already included in Montezuma's rate base, Staff recommended denial of the financing as to the vehicle. (Ex. S-1 at 18.)

On brief, Staff maintained that the Olsen Docket financing should not be approved, stating both that Staff considered the financing applications filed on April 12, 2013, to be corrections to the original financing applications rather than new financing applications and that approval of the financing requests related to the Well No. 4 site and the company vehicle would be inappropriate for the reasons described above. (Staff Brief at 10, 24.)

We find that it would be neither reasonable nor appropriate to approve the loan agreement included within the Olsen Docket. As acknowledged by the parties, Well No. 4 is neither used nor useful at this time, and Montezuma's ratepayers should not be held responsible for any debt incurred as a result of its purchase. Because the purchase price for the vehicle has already been paid in full,

Montezuma holds title to the vehicle, and the vehicle has already been included in plant in service for purposes of establishing rate base, it would not be appropriate for the Commission to authorize payments to Ms. Olsen for the vehicle. Ms. Olsen should, in the future, have Montezuma directly purchase equipment such as vehicles so that Montezuma holds title to the equipment, Montezuma is the entity responsible for any debt associated with the equipment's purchase,[40] and the equipment is accounted for in the appropriate National Association of Regulatory Utility Commissioners ("NARUC") account from the time of its acquisition.

C. Arias Docket

In the Arias Docket, Montezuma requests approval to incur debt resulting from a loan agreement in which Montezuma promised to pay Sergei Arias, Ms. Olsen's son, the amount of $15,000, with interest at a rate of 6 percent per year, through monthly payments of $289.99 beginning on July 1, 2011, and ending on July 1, 2016, for the purchase of an 8,000-gallon hydro-pneumatic tank (also referred to as a pressure tank). (Ex. C-77.) The Arias Docket financing application states that the hydro-pneumatic tank provides an additional 8,000 gallons of water storage to the system. (*Id.*) The only document included to support the purchase of the pressure tank is a June 19, 2011, invoice from Sergei Arias to Montezuma, showing $15,000 due on receipt. (*Id.*) The loan agreement was signed by Ms. Olsen for Montezuma as borrower on June 30, 2011, and by Sergei Arias ("Sergei") as lender. (*Id.*)

In her prefiled direct testimony, Ms. Olsen testified that Montezuma's two 2,000-gallon hydro-pneumatic tanks have been repaired twice, are not epoxy coated, and are subject to corrosion. (Ex. A-2 at 24.) Ms. Olsen testified that the tank at Well No. 2 does not operate properly and must be replaced, and that she intends to move the Well No. 1 pressure tank to Well No. 2 and to install the newer 8,000-gallon pressure tank at Well No. 1. (*Id.*) Ms. Olsen further asserted that adding a well-maintained 8,000-gallon epoxy-coated pressure tank at a cost of $15,000 is reasonable because the volume of water held by a pressure tank may be less than 50 percent of the tank's stated capacity due to the need for a pressure tank to hold a balanced amount of water and compressed air. (*Id.*) Ms.

[40] This debt must receive prior Commission approval if it is long-term debt.

Olsen also opined that a brand new 2,000-gallon pressure tank costs $40,000 to $80,000. (*Id.*) Ms. Olsen further asserted that the 8,000-gallon pressure tank is necessary to reduce pump operations, to replace the current tank with a longer-lasting tank, and to assist future fire flow demands. (*Id.*)

At hearing, Ms. Olsen explained that she located the used tank for sale on an Internet auction site and that she asked her son to purchase it because she did not have the funds to purchase it. (Tr. at 191-92, 215.) Ms. Olsen denied that Sergei had purchased the tank from Mr. Rask. (Tr. at 222.) Ms. Olsen did not have a receipt from Sergei showing his purchase of the tank and was unable to recall how much he paid for the tank, what year the tank was manufactured, the brand of the tank, or where the tank had been used previously. (Tr. at 188-89, 191.) She said that the $15,000 price for the tank was based on how much her son paid for it and its value. (Tr. at 189.) Ms. Olsen did not have the tank professionally inspected either before or after it was purchased, but did look at it herself and have a welder/"pump guy" look at it after it was acquired, and he concluded that the tank was in good condition and would be usable on Montezuma's system after some piping modifications. (Tr. at 189-90, 215-16.) The tank is stored at Rask Construction's premises. (Tr. at 185.) Ms. Olsen testified that Montezuma has not connected the tank to its system because it has not received authority to incur the debt to complete its purchase of the tank. (Tr. at 191-92.) Montezuma did not file a financing application to obtain that authority in 2011 because it wanted to do so with the rate case. (Tr. at 192.)

On August 26, 2011, Montezuma issued Sergei (under his first name of Arnold) a check for $2,581.70, drawn from Montezuma's Hook-Up Account, with the notation "For Hydro Tank." (*See* Ex. C-74; Tr. at 187.) Ms. Olsen initially agreed that Montezuma had made one principal payment on the pressure tank loan agreement, but then stated that the payment was not a principal payment, merely a payment made so that Sergei would hold the tank and not sell the tank to someone else. (Tr. at 186, 219.) She also stated that Sergei is a student at Northern Arizona University and needed some funds for the semester. (Tr. at 440.) When asked whether she really believed that her son would sell the tank to someone else, she stated that he might if he needed the money. (Tr. at 439-41.) Ms. Olsen testified that she did not believe the loan agreement was long-term debt because it was only for five years. (Tr. at 186.)

On brief, Montezuma reiterated that the Arias Docket financing application should be

approved, asserting that the financing is for a lawful purpose, within the corporate powers of Montezuma as a public utility, consistent with the public interest, compliant with sound financial practices as a utility, and not a hindrance to Montezuma's ability to provide utility service to its customers. (Montezuma Brief at 5.) Montezuma also characterized the transaction as "an arms' length transaction that will benefit Montezuma and its customers." (*Id.*)

In his prefiled responsive testimony, Mr. Dougherty opposed approval of the Arias Docket financing application, asserting that the need for the pressure tank could be eliminated if Montezuma's CC&N were revoked, or if Montezuma were sold to AWC. (Ex. C-93 at 13.) At hearing, Mr. Dougherty acknowledged that he is not qualified to determine whether Montezuma needs an 8,000-gallon pressure tank to operate its water system. (Tr. at 831.) Mr. Dougherty also expressed concern about whether the pressure tank, obtained from Ms. Olsen's son without any supporting documentation, is a proper expense for ratepayers to bear. (Tr. at 841.)

On brief, Mr. Dougherty does not discuss the Arias Docket financing application specifically, but generally asserts that the "Commission should dismiss the . . . financing applications because the Company is not in Compliance with Commission regulations and statutes." (Dougherty Reply Brief at 25.)

In its prefiled testimony, Staff asserted that addition of the 8,000-gallon pressure tank to Montezuma's system is reasonable and appropriate and recommended that Montezuma be permitted to recover not just the requested financing amount of $15,000, but also an additional $3,541 to cover installation costs, for a total of $18,541. (Ex. S-1 at 18-19, att. A at 20.) Staff's engineer stated that the used 8,000-gallon pressure tank would replace the old 2,000-gallon pressure tank at the site for Well No. 1 and that the use of the 8,000-gallon pressure tank for this purpose is reasonable and appropriate. (Ex. S-1 at att. A at 20.) Staff stated that the estimated monthly payment for financing of $18,541 over five years would be $358.45 per month and recommended that this amount be funded through a surcharge that would terminate after 60 months of collection. (Ex. S-1 at 19.) Staff did not specify in its prefiled testimony what procedure, if any, Montezuma should be required to follow before it would be able to implement the recommended surcharge. (*See id.*; Ex. S-2 at 5.) In its schedules, Staff provided a cash flow analysis and a financial analysis both with and without debt

incurred as a result of the Arias Docket financing and with and without an associated surcharge. (Ex. S-2 at Sched. GWB-4 Resp., Sched. GWB-5 Resp.)

At hearing, Mr. Becker recommended approval of the financing for the pressure tank and of a surcharge to cover the costs of that financing, but clarified that his prefiled schedules had not provided a typical bill analysis to show the estimated impact of the recommended surcharge on customer bills. (Tr. at 890-91, 1033-34.) Mr. Becker also clarified Staff's recommendation that to implement the surcharge, Montezuma be required to file an implementation request for Commission approval, which would be followed by Staff's calculation of the appropriate surcharge (based on the actual loan debt service payments and the current customer count) and preparation and filing of a recommended order, within 30 days of Montezuma's implementation request, for Commission consideration. (Tr. at 1056-57, 1077-78; see Ex. S-1 at 29.) Staff's late-filed exhibit showed that the surcharge associated with the Arias Docket financing was estimated to be approximately $1.65 per customer per month. (LFE S-5.) Mr. Becker also testified that he did not know the brand of the pressure tank and had not seen the pressure tank or any documentation supporting the pressure tank purchase, aside from the Arias Docket financing application, but that he did not consider it uncommon for a closely held company to borrow money from a family member to purchase company assets. (Tr. at 1033-34.) Mr. Scott also testified that the 8,000-gallon pressure tank would benefit Montezuma's system operations and recommended that the financing for it be approved. (Tr. at 695-96.) Mr. Scott testified that a brand new 8,000-gallon pressure tank would cost approximately $18,000 and that a used 8,000-gallon pressure tank in good serviceable condition would cost approximately $12,000 to $15,000. (Tr. at 733.)

On brief, Staff maintained that the Arias Docket financing should be approved and that a surcharge should be approved to support it. (Staff Brief at 11, 23-24.)

We agree with Staff's position regarding the Arias Docket financing application, which would allow $15,000 for the 8,000-gallon hydro-pneumatic tank and $3,541 for installation of the tank. We also agree with Staff's calculation of the associated surcharge. However, the Company may not begin to collect any surcharge until (1) Staff verifies that the tank is installed and operational, (2) the tank has received an AOC from ADEQ, (3) Staff has made its best efforts to verify the purchase price

paid by Mr. Arias for the tank, and (4) the Company obtains approval of proposed surcharge amounts for its various meter sizes. The Company shall file a letter in the Docket informing Staff and the Commission when the tank is installed and operational and has received an AOC from ADEQ. Staff shall then conduct a field inspection to ensure that the tank is installed and operational and has received an AOC from ADEQ. The Company shall then file an application for approval of the proposed surcharge amounts for the various meter sizes. The surcharges shall remain in effect only until such time as the Company's costs for the tank as approved herein have been collected from customers.

D. WIFA Loan

In one of its new financing applications filed in this matter in April 2013, Montezuma requests authority to obtain a WIFA loan in the amount of $108,000, to cover the cost of purchasing four 20,000-gallon storage tanks from Cashion Tank & Steel Co. ("Cashion"), at $22,000 each, plus an additional $20,000 for engineering, permitting, and installation of the storage tanks ("WIFA Loan"). (Ex. A-22.) To support the WIFA Loan application, Montezuma submitted a March 21, 2013, quote from Cashion for the construction of one 20,000-gallon water storage tank 12' x 24' high in Cashion's yard, sandblasted, epoxy coated on the inside, and painted on the outside. (Ex. A-22.) Cashion quoted a price of $22,000, plus delivery, for one tank and would require a down payment of 50 percent with the remainder due on completion. (*Id.*) The quote is not signed by Montezuma. (*See id.*) Additionally, Montezuma included an April 11, 2013, printout of its application submitted to WIFA, which indicated that Montezuma desired to begin construction on the project on October 30, 2013. (*Id.*)

In prefiled testimony, Ms. Olsen stated that while Staff had determined that Montezuma needs two 40,000-gallon storage tanks to meet customer demand during fire flow demand, Ms. Olsen believed it more appropriate to add four 20,000-gallon storage tanks because more storage capacity would remain available should any of the four tanks need to be taken out of service for any length of time for maintenance or repair. (Ex. A-2 at 20.) Ms. Olsen further stated that the presence of overhead power lines at the Well No. 1 site would impose height and width limitations on a 40,000-gallon storage tank. (*Id.*) Ms. Olsen stated that the storage tanks are necessary, and thus approval of

the WIFA Loan is necessary, to allow Montezuma to provide adequate water service and meet fire flow demand (500 GPM). (*Id.*) Ms. Olsen also testified that the current storage tanks at Well No. 1 and Well No. 2 leak extensively and predicted that they will no longer be able to store water within the next year, which would leave only one 5,000-gallon storage tank for the entire system. (*Id.* at 20-21.) At hearing, Ms. Olsen asserted that the requested WIFA Loan would be for a lawful purpose, in the public interest, and consistent with sound financial practices; that it would not impair Montezuma's ability to provide utility service; and that it would enhance Montezuma's ability to provide that service. (Tr. at 127-28.) Ms. Olsen also testified that Montezuma may not actually need all four tanks if Well No. 4 becomes available for use on the system. (Tr. at 418-19.) Ms. Olsen stated that she intends to have the tanks constructed one at a time, not all at once, so Montezuma may not need to spend the full amount approved for the WIFA Loan. (*See id.*) Additionally, Montezuma provided evidence that Montezuma's storage tank project has been placed on WIFA's Drinking Water Project Priority List, as of June 19, 2013. (Ex. A-27; Tr. at 132-33.)

On brief, Montezuma maintained that the WIFA Loan should be approved, along with the surcharge, because the storage tank replacement project will benefit Montezuma's customers. (Montezuma Brief at 7-8.)

In his prefiled testimony and on brief, Mr. Dougherty opposed approval of Montezuma's requested WIFA Loan because Montezuma is not in compliance with Commission regulations and statutes, and Montezuma would not need additional storage tanks if it no longer held a CC&N for the service area. (See, *e.g.*, Ex. C-93 at 12; Dougherty Reply Brief at 25.) Mr. Dougherty acknowledged at hearing that he does not have the expertise to determine whether Montezuma needs the additional storage tanks for its system operations. (Tr. at 831.)

In its prefiled testimony, Staff indicated that the proposed financing for four 20,000-gallon storage tanks is reasonable and appropriate, as the new tanks will replace two old, deteriorated, and leaking tanks and will provide additional storage capacity that Montezuma's system needs. (Ex. S-1 at att. A at 2-3, 21.) Regarding the WIFA Loan, Staff recommended the following:

- That Montezuma be granted authority to incur an 18- to 22-year amortizing loan in an amount not to exceed $108,000 pursuant to a loan agreement with WIFA and at an interest

rate not to exceed that available from WIFA, for the purpose of installing additional storage tanks;

- That Montezuma be required, within 30 days after executing the WIFA Loan, to provide Staff's Utilities Division Director a copy of any WIFA Loan documents executed and to file with Docket Control a letter verifying that the WIFA Loan documents have been so provided;
- That Montezuma be required to file, as a compliance item in this Docket, within 30 days after executing any financing transaction authorized herein, a notice confirming that the execution has occurred and a certification by an authorized Montezuma representative that the terms of the financing fully comply with the authorizations granted;
- That any unused authorization to incur debt authorized herein expire on December 31, 2015;
- That Montezuma be authorized to charge an infrastructure surcharge to meet its WIFA Loan debt service and associated loan obligation, with the surcharge to become effective at a date and in a manner subsequently authorized by the Commission;
- That Montezuma be directed to file in this Docket, upon filing of the loan closing notice and upon providing the loan documents to Staff, an application requesting to implement an associated surcharge;
- That Staff be directed, within 30 days of Montezuma's filing of a surcharge implementation request, to calculate the appropriate WIFA surcharge, based on the actual loan debt service (interest and principal) payments and using the current customer count at the time of the loan closing to provide the cash flow adopted in this proceeding, and prepare and file a recommended order for Commission consideration;
- That Montezuma be authorized to pledge its assets in the State of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection with the WIFA Loan; and
- That Montezuma be authorized to engage in any transaction and to execute any documents necessary to effectuate the authorizations. (Ex. S-1 at 28-29.)

At hearing, Mr. Scott testified that the four 20,000-gallon storage tanks are necessary for

Montezuma's system and recommended approval of the financing for those because the tanks will benefit the system and the financing thus would help system operations. (Tr. at 695-96.) Mr. Scott explained that Montezuma's system has been modified since its last rate case so that it now has two different pressure zones, and additional storage capacity is needed at each pressure zone to meet fire flow requirements. (Tr. at 710.) Mr. Scott acknowledged that if Well No. 4 were to become part of the system, two of the four 20,000 gallon storage tanks may not be needed, but also agreed that obtaining approval for the WIFA Loan to get the four storage tanks would serve as a good "safety net" should Montezuma not be able to obtain approval to use Well No. 4. (Tr. at 740-41.) Mr. Becker also reiterated Staff's support for the WIFA Loan to finance the four storage tanks. (Tr. at 891.)

In its late-filed exhibit, Staff estimated that the WIFA Loan surcharge would be approximately $3.01 per customer per month. (LFE S-5.) Additionally, Staff set forth its cash flow analysis and financial analysis, showing that Montezuma would be able to pay the WIFA Loan, even without the WIFA Loan surcharge, if Staff's recommended rates and charges were approved.[41] (LFE S-5 at Sched. GWB-5.) On brief, Staff maintained its support for the storage tank project, the WIFA Loan, and the associated surcharge. (Staff Brief at 17, 23.)

Both Staff's engineer and Ms. Olsen, who has technical expertise in water system facility operations, assert that Montezuma's system needs additional storage capacity both in order to serve its current customers and to meet fire flow requirements. Montezuma's proposal to add four 20,000-gallon storage tanks, in stages, is a reasonable and appropriate plan to address the storage capacity issue, particularly as Montezuma may at some point be able to add Well No. 4 to its system. Montezuma has provided a quote from a third-party vendor for the construction of the storage tanks, and Staff has found the quoted costs related to the purchase of the storage tanks to be reasonable. Mr. Dougherty has not provided any evidence to dispute the appropriateness of either the addition of the

[41] Staff's analysis shows that Montezuma would have a debt service coverage ratio ("DSC") of 1.34 and a times interest earned ratio ("TIER") of 1.35 if Staff's rates and charges, the Arias Docket loan, the Arias Docket surcharge, and the WIFA Loan (without a WIFA Loan surcharge) were approved. (LFE S-5 at Sched. GWB-5.) Mr. Becker testified that a DSC or TIER above 1.0 means that a utility can afford to pay its debts. (Tr. at 1050-51.) Staff's analysis further shows that if the Arias Docket financing and surcharge were not approved, and the WIFA Loan and WIFA Loan surcharge were approved, assuming Staff's recommended rates and charges were also approved, Montezuma would have a DSC of 2.52 and a TIER of 2.51. (LFE S-5 at Sched. GWB-5.)

four storage tanks themselves or the costs related to the proposed project. Also, WIFA has prioritized Montezuma's WIFA Loan request. In light of these factors, we find that it is reasonable and appropriate to approve Montezuma's WIFA Loan request, subject to the conditions enumerated in Staff's recommendations described above. Additionally, we find that it is appropriate to authorize a WIFA Loan surcharge, subject to the implementation approval process enumerated in Staff's recommendations, and three additional conditions: (1) Montezuma must segregate all funds collected under the WIFA Loan surcharge in a separate account and may use those funds only for the purpose of making debt service payments for the actual WIFA Loan debt service (principal and interest); (2) the WIFA Loan surcharge will expire automatically upon the end of the term for the WIFA Loan, unless the WIFA Loan surcharge is first reduced or otherwise modified by Commission Order; and (3) if, when the WIFA Loan surcharge ends, Montezuma has collected more funds through the WIFA Loan surcharge than were needed to make the WIFA Loan debt service payments, Montezuma shall credit the amount of the overage in it next monthly billing, with each customer receiving an equal portion of the overage amount, and Montezuma shall file a notice with the Commission showing that such credits have been made. Montezuma's customers now and in the future will benefit from the addition of the storage tanks, which will enhance both the availability of water to customers for general purposes and the availability of water for fire flow purposes, and it is appropriate to ensure that Montezuma has designated funds available to pay the WIFA Loan.

E. Retroactive Financing Approval Requests

1. Commission Authority

Mr. Dougherty asserts that the Commission has no legal authority to grant retroactive approval of long-term debt, citing both A.R.S. §§ 40-301 and 40-302 to support his position that public service corporation long-term debt may only legally be approved by the Commission before it is incurred. Montezuma and Staff disagree with Mr. Dougherty's position and assert that the Commission has legal authority to grant retroactive approval of long-term debt, with Montezuma and Staff both citing the Commission's exclusive and plenary ratemaking authority under Article XV, § 3 of the Arizona Constitution as well as prior Commission Decisions.

Because two of the financings for which Montezuma has requested authorization in this

matter are for lease agreements executed by Montezuma in 2012, without prior Commission approval, and a determination that the Commission lacked legal authority to approve the debt created by those lease agreements would be dispositive, it is appropriate to address the legal issue before addressing the specifics of those financing arrangements.

A.R.S. §§ 40-301 and 40-302 provide as follows:

> **40-301. Issuance of stocks and bonds; authorized purposes**
>
> **A.** The power of public service corporations to issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, and to create liens on their property located within this state is a special privilege, the right of supervision, restriction and control of which is vested in the state, and such power shall be exercised as provided by law and under rules, regulations and orders of the commission.
>
> **B.** A public service corporation may issue stocks and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, only when authorized by an order of the commission.
>
> **C.** The commission shall not make any order or supplemental order granting any application as provided by this article unless it finds that such issue is for lawful purposes which are within the corporate powers of the applicant, are compatible with the public interest, with sound financial practices, and with the proper performance by the applicant of service as a public service corporation and will not impair its ability to perform that service.
>
> **D.** The provisions of this article shall not apply to foreign public service corporations providing communications service within this state whose physical facilities are also used in providing communications service in interstate commerce.
>
> **40-302. Order authorizing issuance of stocks, bonds or other evidences of debt; hearing on application to issue; amount of issue; issuance of short term notes without commission order; capitalization of certain items prohibited; accounting for proceeds of issues**
>
> **A.** Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the commission an order authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or appropriate for the purposes specified in the order, pursuant to section 40-301, and that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative expenses or to income. Before an order is issued under this section, notice of the filing of the application for such order shall be given by the commission or the applicant in such form and manner as the commission deems appropriate. The commission may hold a hearing, and make inquiry or investigation, and examine witnesses, books, papers and documents, and require filing data it deems of assistance.

> **B.** The commission may grant or refuse permission for the issue of evidences of indebtedness or grant the permission to issue them in a lesser amount, and may attach to its permission conditions it deems reasonable and necessary. The commission may authorize issues less than, equivalent to or greater than the authorized or subscribed capital stock of the corporation, and the provisions of the general laws of the state with reference thereto have no application to public service corporations.
>
> **C.** A public service corporation shall not, without consent of the commission, apply the issue of any stock or stock certificate, bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for the purpose, or issue or dispose of the proceeds of such issuance on any terms less favorable than those specified in the order.
>
> **D.** A public service corporation may issue notes, not exceeding seven per cent of total capitalization if operating revenues exceed two hundred fifty thousand dollars, for proper purposes and not in violation of law payable at periods of not more than twelve months after date of issuance, without consent of the commission, but no such note shall, wholly or in part, be refunded by any issue of stocks or stock certificates, bonds, notes or any other evidence of indebtedness without consent of the commission.
>
> **E.** The commission may not authorize the capitalization of the corporate franchise, or of any franchise or permit whatever, or the right to own, operate or enjoy any such franchise or permit, in excess of the amount, exclusive of taxes or annual charges, actually paid to the state or to a political subdivision thereof as the consideration for the grant of the franchise, permit or right, nor shall any contract for consolidation or lease be capitalized, nor shall any public service corporation issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.
>
> **F.** The commission may require public service corporations to account for the disposition of the proceeds of all sales of stocks and stock certificates, bonds, notes and other evidences of indebtedness, in the form and detail it deems advisable, and may establish rules and regulations it deems reasonable and necessary to insure the disposition of such proceeds for the purpose specified in its order.

Montezuma asserts that the Commission has authority under the Arizona Constitution, Title 40 of the Arizona Revised Statutes, and controlling precedent to grant retroactive approval of Montezuma's leases. (Montezuma Brief at 68.) Montezuma argues that A.R.S. §§ 40-301 and 40-302 do not prohibit the Commission from granting retroactive approval and are not "one-strike statutes forever penalizing a utility that fails to initially comply" with them. (*Id.* at 69.) Montezuma further states that the Commission has plenary authority over ratemaking and exercises control over utility expenditures through financing approvals and through rate regulation and that prohibiting the Commission from granting retroactive review and approval of financing and debt transactions would violate the Commission's plenary authority over ratemaking. (*Id.*) Montezuma asserts: "The

legislature, let alone Mr. Dougherty, cannot override the Commission's constitutional ratemaking authority." (*Id.*) Montezuma further asserts that the Commission's authority to grant retroactive financing approval is "evidenced and supported by its long-standing precedent and practice of doing exactly that."[42] (*Id.* at 70.) Montezuma further asserted that a finding that the Commission lacks authority to grant retroactive approval of long-term debt would render all of the decisions in which the Commission has granted such authority contrary to law and in need of rescission and modification. (*Id.* at 71.)

Mr. Dougherty asserts that while the Commission has previously granted retroactive approval of long-term debt, it has done so only rarely and "reluctantly," without citation to the specific legal authority to do so, and without expressly citing A.R.S. § 40-301(C) in the Conclusions of Law paragraph in which the Commission enumerates and concludes that the long-term debt at issue is consistent with the standards set out in A.R.S. § 40-301(C).[43] (Dougherty Brief at 16-17.) Mr. Dougherty also notes that no Intervenor or Complainant opposed retroactive approval in those cases and that the Commission generally also admonished or penalized the public service corporation that had failed to obtain prior approval. (*See id.* at 16-18.) Mr. Dougherty asserts that the law (specifically A.R.S. § 40-302(A)) is clear that public service corporations are required to obtain Commission approval before entering into long-term debt. (*Id.* at 18.) Mr. Dougherty states that "nothing expressly stated in ARS 40-301 (C) . . . gives the Commission the authority to ignore the fundamental requirement in ARS 40-302 (A) that a public service corporation receive Commission approval BEFORE issuing notes or other evidences of indebtedness." (*Id.* at 18-19.) Mr. Dougherty requests that the Commission deny retroactive approval because there is no legal basis for granting it. (*Id.* at 19.) In response to Staff's assertion that the Commission has constitutional authority to grant retroactive approval of long-term debt, Mr. Dougherty asserts that Montezuma does not deserve to

[42] Montezuma cited a number of cases between 1993 and 2012 and stated that there are "many, many" such decisions. (Montezuma Brief at 70-71.)

[43] Mr. Dougherty's focus on the omission of a statutory citation to A.R.S. § 40-301(C) in such a paragraph, or at all, is misplaced. The Commission generally cites to applicable legal authority in the first Conclusions of Law ("COL") paragraph rather than in each individual COL paragraph. (*See, e.g.,* Decision No. 72667 at 15-16, COL ¶ 1.) The statute instructs the Commission to make certain substantive determinations related to a financing being approved; the effectiveness of those substantive determinations is not negated if the Commission does not include a citation to the statute.

benefit from the Commission's discretionary power, if the Commission has such power, which Mr. Dougherty believes it does not. (Dougherty Reply Brief at 9.)

Like Montezuma, Staff asserts that the Commission has often provided retroactive approval of debt. (Staff Brief at 14.) Staff also observes that A.R.S. §§ 40-301 and 40-302 are directed to the obligations of the utility to obtain Commission approval and do not prohibit the Commission from granting retroactive approval or express any limitation on the Commission's approval authority and that the statutes place no time limits on the Commission's ability to grant such approval. (*Id.*) Staff pointed out that the Arizona Constitution grants the Commission plenary authority to set rates and take any necessary step in the ratemaking process, which would include approving debt that is to be funded by rates the Commission approves, and that any interpretation of A.R.S. §§ 40-301 and 40-302 that would curb the Commission's ability to approve financings would also curb the Commission's constitutional ratemaking authority and would be unconstitutional. (*Id.* at 15.) Because a statute must be interpreted so as to render it lawful, if possible, Staff reasoned, A.R.S. §§ 40-301 and 40-302 should not be interpreted to produce such a result. (*Id.*)

Consistent with the arguments of Montezuma and Staff, and with the actions taken in the prior Commission decisions cited and others, we find that the Commission has the legal authority to grant (or deny) retroactive approval of long-term debt and other financings for which a public service corporation is required to obtain approval under A.R.S. §§ 40-301 and 40-302. Article 15, § 3 of the Arizona Constitution grants the Commission exclusive and plenary authority over ratemaking, and Arizona courts have confirmed that this authority extends to all necessary steps in ratemaking, as determined in the Commission's discretion. The financing of utility facilities through long-term debt (or otherwise) has a significant impact upon a utility's financial condition and on the revenue available for the utility to remain viable and maintain adequate and reliable service to its customers at reasonable rates. If the Commission were unable to authorize recovery for long-term debt retroactively, a utility and its customers could face dire consequences, even if the utility only inadvertently failed to file a timely request for approval of financing. Such a result would not be consistent with the Commission's constitutional authority and, moreover, would not be in the public interest. Thus, because approval or disapproval of a utility's long-term debt and other forms of

financing is a necessary step in ratemaking, the Commission must and does have authority under Article 15, § 3 of the Arizona Constitution, to retroactively approve or disapprove long-term debt and other forms of financing. This determination is not intended to and does not negate a public service corporation's legal obligation under A.R.S. §§ 40-301 and 40-302 to apply to the Commission for prior approval of long-term debt and other forms of financing. Rather, it recognizes that the Commission's hands are not tied if a public service corporation fails to meet that obligation. The Commission can take other appropriate action against a public service corporation that fails to comply with the law.

2. The Leases

Montezuma is requesting approval of the long-term debt created through a lease agreement with Nile River, which was executed by Montezuma on March 22, 2012, and by Mr. Torbenson for Nile River on March 23, 2012, and in which Montezuma promised to pay a deposit of $734.46, and to make monthly payments of $342.09 each over a period of 36 months, to cover the $8,000 cost of an arsenic treatment system building constructed at the site for Well No. 1, for which Montezuma accepted delivery on May 10, 2012.[44] (Ex. A-22 at ex. B; Ex. A-2 at 21-22.)

Montezuma is also requesting approval of the long-term debt created through a lease agreement with Financial Pacific, which was executed by Montezuma on March 22, 2012, and in which Montezuma promised to pay an initial amount of $2,691.92, and to make monthly payments of $1,135.96 each over a period of 60 months, to cover the $38,000 cost of an arsenic treatment system obtained from Kevlor Design Group, LLC.[45] (Ex. A-22 at ex. C; Ex. A-10.) The Financial Pacific lease also shows that Montezuma will have an option to purchase the equipment at the end of the lease term for $1.00. (Ex. A-22 at ex. C; Ex. A-10.)

Montezuma first requested approval of the long-term debt created through these leases when it docketed a Notice of Filing Financing Applications in this matter on April 12, 2013, although it stated the following in a footnote to that Notice of Filing:

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[44] This results in total payment of $13,049.70, which represents total interest expense of $5,049.70 on the principal of $8,000.

[45] This results in total payment of $70,849.52, which represents total interest expense of $32,849.52 on the principal of $38,000.

> MRWC does not believe that the Nile River Lease qualifies as a capital lease, but the Company is willing to submit that lease to the Commission for review and approval. It also should be noted that, on January 14, 2013, intervenor Mr. Dougherty requested that the Company be required to submit the Nile River and Financial Pacific lease agreement [sic] for approval by the Commission as part of the ongoing rate case application.[46]

Although Montezuma requested approval of the Nile River lease in this Financing Application filed on April 12, 2013, Montezuma did not include the last page of the lease agreement in the Application, and it was only revealed when provided by Mr. Dougherty in a Motion filed on April 15, 2013.[47] *(See* Ex. A-22; Ex. A-9.) The last page of the lease agreement, headed "Rider No. 2," which was signed by Ms. Olsen for Montezuma, provides Montezuma the option to purchase the equipment (i.e., the building) at the end of the original term of the lease, for $1.00. *(See* Ex. A-9; Ex. C-20.) While the parties have all now acknowledged that the Nile River lease is a capital lease, which creates long-term debt, rather than an operating lease, which creates only operating expenses, without Rider No. 2, the status of the lease as a capital lease was less apparent.[48] *(See, e.g.,* Tr. at 353, 355, 938-39.) Ms. Olsen testified that she did not have a copy of Rider No. 2 in her files, although she confirmed that she had signed it. (Tr. at 327.)

The copy of the Financial Pacific Lease agreement filed by Montezuma on April 12, 2013, includes all of the pages of the agreement, but shows a signature date of "5/2/2012" for Ms. Olsen's signature on page 1 of 5 and, on the same page, does not include a date for the first payment to be made under the lease.[49] *(See* Ex. A-22 at ex. C.) Another copy of the lease provided by Montezuma

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[46] Ex. A-22 at 2.

[47] On April 15, 2013, Mr. Dougherty filed in this matter a complete copy of the Nile River lease, including Rider No. 2, and a complete copy of the 5-page Financial Pacific lease dated April 2, 2012, and including a first payment due date of April 15, 2012, on page 1 of 5. Official notice is taken of Mr. Dougherty's Statement of Facts in Support of Intervenor/Complainant's Motion for Partial Summary Judgment, docketed April 15, 2013 ("Dougherty SOF 4/15/13").

[48] Official notice is taken of Staff's Notice of Filing Response to Procedural Order, filed in the 40-252 Docket on April 27, 2012, setting forth the test for whether a lease is a capital lease or an operating lease. Staff explained that a lease is a capital lease if any of the following criteria are met:

> (1) the lease conveys ownership to the lessee at the end of the lease term; (2) the lessee has an option to purchase the asset at a bargain price at the end of the lease term; (3) the term of the lease is 75 percent or more of the economic life of the asset; and (4) the present value of the rents, using the lessee's incremental borrowing rate, is 90 percent or more of the fair market value of the asset.

(Staff's Notice of Filing at 2.) Staff determined that the "Water Services Agreement" that had been filed by Montezuma was a capital lease because the transfer of the assets for $1 at the end of the lease term met the second criterion. (*Id.*) Staff further stated that the Water Services Agreement also met the third criterion, but that Staff needed to obtain additional information from Montezuma to determine whether the fourth criterion was also met. (*Id.*)

[49] The area in which the payment due date would appear (and does appear in another copy of the lease provided by Montezuma as an exhibit hereto) has signs of alteration, in that a portion of "1st" appears to have been whited out. (*See*

as an exhibit hereto has the date under Ms. Olsen's signature on page 1 of 5 redacted, but includes a first payment due date of ("4/15/2012") on the same page. *(See* Ex. A-10.) Ms. Olsen testified that she signed two different versions of the Financial Pacific lease. (Tr. at 95-96.) Montezuma is requesting approval of the Financial Pacific lease dated May 2, 2012, which Ms. Olsen testified is, except for the dates, the same as the April 2012 agreement with Financial Pacific. (Ex. A-2. at 22.)

Ms. Olsen testified that ADEQ "essentially order[ed]" Montezuma to install and operate an arsenic treatment system and that the Financial Pacific lease is in the best interests of Montezuma and its customers because it provided the funds to pay for the arsenic treatment plant so that Montezuma could continue to provide its current and future customers water that meets applicable drinking water standards. (Ex. A-2. at 22.) Ms. Olsen testified that the Financial Pacific lease benefits her customers in many ways because the arsenic treatment system was installed by July 2012 and was in use in November 2012. (Tr. at 101-03.)

In her prefiled testimony and at hearing, Ms. Olsen testified that she always intended to have the Financial Pacific and Nile River leases approved by the Commission as part of the rate case. (Ex. A-2 at 12, 14; Tr. at 93.) At hearing, Ms. Olsen also testified that she understands there is a statutory requirement for financial arrangements such as the leases to be submitted to the Commission beforehand, for review and approval. (Tr. at 93-94.) Ms. Olsen stated that this did not occur with the leases because she was "under an enormous amount of pressure from the county and from ADEQ to install the arsenic treatment system regardless of whether there was or was not funding available." (Tr. at 98-99.) Ms. Olsen also agreed when asked by Montezuma's counsel whether she had been confused about the leases and the approval process. (Tr. at 99.)

Ms. Olsen testified that the costs under the leases are fair and reasonable and that they compare favorably to the amount approved for WIFA funding in Decision No. 71317. (Ex. A-3 at 12.) Ms. Olsen testified that the arsenic treatment system is necessary because it makes it possible

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Ex. A-22 at ex. C.) On March 21, 2013, Mr. Dougherty filed a complete copy of the Financial Pacific lease, obtained from Financial Pacific, showing on page 1 of 5 a typed first payment due date of April 15, 2012; showing a typed date of April 2, 2012, under Ms. Olsen's signature on page 1 of 5; and including an Equipment List showing a typed date of April 2, 2012, under Ms. Olsen's signature. Official notice is taken of Mr. Dougherty's Notice of Filing Additional Exhibits; Response to Staff's and Company's Joint Filing to Extend Schedule; Motion to Maintain Complaint Portion of Docket under Current Hearing Schedule, docketed March 21, 2013 ("Dougherty NOF 3/21/13").

for Montezuma to provide safe drinking water and that the building is necessary because the arsenic treatment system is composed of two composite fiberglass tanks and schedule 80 PVC pipe, all of which would be damaged or destroyed by sun exposure.[50] (Ex. A-3 at 12; Ex. A-2 at 21.) Ms. Olsen testified that approval of the leases will provide Montezuma the funds needed to keep the system operating so that the water provided to current and future customers meets applicable drinking water standards, which is in the best interests of Montezuma and its customers. *(See* Ex. A-2 at 21; Tr. at 78.) Ms. Olsen testified, and Montezuma provided documentation to show, that payments were being made to both Financial Pacific for the Financial Pacific lease and to Odyssey Equipment Financing for the Nile River lease.[51] (Tr. at 105; Ex. A-15; Ex. A-16.)

As described above, Mr. Dougherty opposes Commission approval of the Nile River lease because such approval would be retroactive and, he asserts, unlawful. In his prefiled testimony and at hearing, Mr. Dougherty also opposed approval of the leases because he believes that the arsenic treatment facilities would not be necessary if the Commission were to revoke Montezuma's CC&N and because the interest rate for the leases is "usurious." *(See* Ex. C-93 at 12; Tr. at 829-30.) Mr. Dougherty states that Montezuma is only providing adequate water service to its customers because "it committed a Class 4 felony by deceiving the Staff and this Commission on the obtaining of the leases for those arsenic treatment plants." (Tr. at 864.) Mr. Dougherty testified that the presence of the arsenic treatment system does not mean that ratepayers have benefited, but that they have been "conned." (Tr. at 868.) On brief, Mr. Dougherty requests that the Commission declare the leases void under A.R.S. § 40-303(A). (Dougherty Brief at 26; Dougherty Reply Brief at 26) Mr. Dougherty also characterizes retroactive approval of the long-term debt as rewarding Montezuma for bad behavior. *(See* Dougherty Reply Brief at 9.) Mr. Dougherty asserts that if Montezuma cannot afford to pay for the capital leases because of its failure to abide by Commission orders, then Montezuma must find additional capital to pay for the arsenic treatment facilities; sell the assets of

[50] Ms. Olsen recounted that all of the PVC pipe for an arsenic treatment system in Tubac had to be replaced after having been exposed to the elements for one year. (Ex. A-2 at 21.)

[51] For the Financial Pacific lease, the documentation included Payment Authorization Notice memos from Financial Pacific showing payments made by Patricia Olsen using a bank card on November 21, 2012; December 20, 2012; January 22, 2013; February 20, 2013; March 21, 2013; and April 22, 2013. (Ex. A-15.) For the Nile River lease, the documentation included receipts showing bank card payments made by Patricia Olsen on December 14, 2012; February 28, 2013; April 29, 2013; May 28, 2013; and June 10, 2013. (Ex. A-16.)

the company to an entity capable of providing adequate water service at a reasonable rate; or "face the consequences of its business decisions." (Dougherty Reply Brief at 18.) Mr. Dougherty argues that Staff does not have the authority to ignore Montezuma's violations of Commission requirements and that "it is not the Commission's responsibility to assist corrupt Companies that fail to meet regulatory standards by ignoring Procedural orders, Commission regulations and state statutes and dismissing them as merely paperwork." (*Id.* at 19.)

Staff recommends that the Commission approve the leases. Mr. Becker testified that Staff is in full support of Montezuma's installing the arsenic treatment system and complying with safe drinking water standards, that the leases meet the appropriate approval requirements, and that Staff would have conducted the same analysis and made the same recommendation for approval if the leases had been presented in March 2012. (Tr. at 887-88.) Mr. Becker stated that he was aware of the testimony presented regarding the existence of versions of the leases with different lessors and different dates, but stated that the financial terms of the leases have been constant. (Tr. at 889.) Mr. Becker did, however, disagree with the suggestion that the terms of the leases are comparable to the terms of the WIFA loan that was authorized in Decision No. 71317, because the WIFA loan had a lower interest rate and was for a longer period and, all else being equal, financing the arsenic treatment system with the WIFA loan would have resulted in lower monthly payments. (Tr. at 892-94.) Mr. Becker did agree that the monthly payments expected with the WIFA loan authorized in Decision No. 71317 and for the combined capital leases are in the "same ballpark" and asserted that there is some benefit from the shorter duration for the leases. *(See* Tr. at 892-93.)

Staff determined that the capital leases are just and reasonable and in the public interest because they were "crucial" to getting the arsenic level remediated, and Montezuma had no alternative means of financing the arsenic treatment system. (Tr. at 1058.) Mr. Becker agreed that the embedded interest rates for the capital leases are "very high," at between 27 percent and 35 percent,[52] but asserted that they seemed to be Montezuma's only option. (Tr. at 1057-58.) Mr. Becker stated that Montezuma is obligated to repay the two leases and will have outstanding debt

[52] In contrast, the typical interest rate for a 20-year WIFA loan is currently approximately 4 to 5 percent. (Tr. at 1059.)

service requirements therefrom. (Tr. at 1065.)

When questioned about the typical consequences of the Commission's denying retroactive approval of long-term debt, Mr. Becker explained that the plant acquired through the unapproved debt would still go into rate base, but the capital supporting it would be treated as paid-in capital instead of debt. (Tr. at 1045-46.) With a utility that has its rates set based on rate of return on rate base, that treatment would impact the authorized rate of return because it would affect the capital structure and thus the weighted average cost of capital. (Tr. at 1046-48.) Mr. Becker testified that in this case, however, because Staff's recommended rates were set on the basis of cash flow and operating margin as opposed to rate of return on rate base, if the Commission were to adopt Staff's recommended rates, a Commission refusal to approve the capital leases would not automatically impact the revenue requirement and the rates recommended by Staff. (Tr. at 1066.) Staff used cash flow and operating margin to determine its recommended revenue requirement and rates because Montezuma's rate base is low, and Staff believed that application of a typical rate of return would result in insufficient cash flow to cover Montezuma's obligations. *(See* Tr. at 1068-70.) Staff essentially treated the lease payment obligations as operating expenses by including them as line items in its cash flow analysis. *(See* Tr. at 1073-74.) Staff asserts that Montezuma should be authorized sufficient revenue to pay the leases because the arsenic treatment system is used to provide safe water, which is in the public interest. (Tr. at 1074.) Mr. Becker clarified, however, that Staff's recommended revenue requirement, without the recommended Arias Docket and WIFA loan surcharges, results in no leftover cash and no unallocated depreciation expense, which Mr. Becker explained is unusual because ordinarily an owner would be able to take depreciation expense as cash. (Tr. at 1081, 1087.) Staff's goal is to keep Montezuma going by providing it enough cash to pay its bills. (Tr. at 1085-87.)

Mr. Becker acknowledged that there were "competing priorities" in this matter, but stated the following regarding Staff's position:

> [W]hen all is said and done and at the end of the day, we put public safety over getting the paperwork in. And we think that it was more important for the company to get the arsenic treatment plant in when she got it in. . . . [T]hat's the standard way it has been around here for quite awhile. . . . Under certain circumstances . . . there has to be an order of priority. And

> if getting the plant in had to come before getting the paperwork done, it is reasonable. [W]e are more concerned with getting the arsenic treatment system in place than we are with . . . getting the capital lease and the associated debt approved.[53]

When asked, Mr. Becker also acknowledged, however, that Staff is not in a position to excuse a company for violating or potentially violating a Procedural Order. (Tr. at 931.)

3. Filing of Invalid Lease Documents

As noted above, Montezuma has, at different times, provided the Commission with different versions of leases associated with procuring the arsenic treatment system and the building to house the arsenic treatment system, and Montezuma has taken different positions at different times as to the Commission's authority to review and approve the leases. The specifics of these events are as follows:

- On October 6, 2011, in the 40-252 Docket, Montezuma made a filing stating that it would be leasing arsenic treatment equipment.
- On October 12, 2011, in the 40-252 Docket, Montezuma filed a Proposed Plan for Arsenic Abatement stating that it would be leasing arsenic treatment facilities from GEcom Water Solutions, Inc. and would file a copy of the executed lease.
- On October 25, 2011, in the 40-252 Docket, Montezuma filed an amended plan stating that it would not execute the lease or move forward with construction of the arsenic treatment plant until the Commission had signed off on the plan.
- On November 9, 2011, a Procedural Order issued in the 40-252 Docket directed Montezuma, *inter alia*, to make a filing explaining the material terms of the lease, the source and ownership of the funds to be used for lease payments, and an analysis whether the lease was a capital lease or an operating lease.
- On December 7, 2011, in the 40-252 Docket, Montezuma filed an Interim Report stating that it had not yet received the lease from GEcom, but expected Odyssey Equipment Financing to provide financing for the lease payments, and that Ms. Olsen was planning to enter the lease with GEcom and would make payments to GEcom or Odyssey with her own personal funds and then sublease the system to Montezuma. Montezuma asked for more time to analyze the lease arrangement because it did not yet have the documents.
- On January 4, 2012, a Procedural Order was issued in the 40-252 Docket requiring, inter alia, that Montezuma file copies of any and all written lease agreements for the arsenic treatment plant and building as soon as such documents came into Montezuma's possession and provide courtesy copies of those documents to Mr. Dougherty and Staff through electronic mail.
- On February 21, 2012, in the 40-252 Docket, Ms. Olsen made a filing including a cover letter from Kevlor Design Group, LLC; an unexecuted "Contract for Arsenic Treatment

[53] Tr. at 926-32.

System" at a cost of $46,000; and an unexecuted Water Services Agreement between Ms. Olsen and Montezuma that would require Montezuma to pay Ms. Olsen a monthly fee of $1500 plus a treatment fee per acre foot for arsenic treatment for 20 years and to buy the arsenic treatment system for $1 at the end of the 20 years. The filing also included four pages of an unexecuted "5 Page Lease Agreement" form showing Financial Pacific Leasing as lessor and not identifying a lessee.

- On March 12, 2012, in the 40-252 Docket, a Procedural Order was issued that, *inter alia*, required Montezuma, by March 30, 2012, to file a copy of any contractual documents related to purchase, construction, installation, operation, or maintenance of an arsenic treatment facility to treat the water from Well No. 1 and/or Well No. 4.

- On March 19, 2012, in the 40-252 Docket, Ms. Olsen made a filing that included two executed one-page lease agreements between Ms. Olsen personally and Nile River: one a 36-month lease for an arsenic building plant and the other a 60-month lease for an arsenic removal water treatment system, both with signatures of Ms. Olsen and "Robin Richards" on March 16, 2012. The filing also included an unexecuted Water Services Agreement between Ms. Olsen and Montezuma, with the same material terms as filed in the previous filing by Ms. Olsen, and a Contract for Arsenic Treatment System with an executed Contract Acceptance Form with signatures of Kelvin Duffy for Kevlor on January 27, 2012, and Ms. Olsen on February 28, 2012.

- On March 20, 2012, in the 40-252 Docket, Montezuma filed a Response to a Motion by Mr. Dougherty, asserting that Montezuma's current arsenic treatment plan was to have Ms. Olsen, in her individual capacity, enter into a contract with Kevlor for construction and operation of arsenic treatment facilities; for Ms. Olsen to finance those facilities through a personal lease agreement with Odyssey; and for Ms. Olsen to enter into a Water Services Agreement with Montezuma through which Ms. Olsen would lease the arsenic treatment facilities to Montezuma. Montezuma stated that the terms and conditions of the Kevlor contract and the Water Services Agreement had been filed with the Commission on February 21, 2012, and that the contracts were in the process of final execution and would be filed as soon as possible. Montezuma further stated that the Commission had no authority over the agreements because there was no debt issuance involved. Montezuma acknowledged that operational expenses could be reviewed by the Commission as part of a rate case.

- On April 9, 2012, in the 40-252 Docket, a Procedural Order was issued requiring Montezuma, through counsel, to file, by April 13, 2012, complete copies of any and all executed agreements by Ms. Olsen or Montezuma for arsenic treatment; and requiring the parties to file, by April 27, 2012, an analysis of each document.

- On April 13, 2012, in the 40-252 Docket, Montezuma filed a Notice including a Water Services Agreement executed by Ms. Olsen as both lessor and lessee on March 16, 2012; two Nile River leases signed by Ms. Olsen and "Robin Richards" on March 16, 2012; and the Kevlor contract signed for Kevlor on January 27, 2012, and by Ms. Olsen on February 28, 2012. Montezuma stated that the documents had been filed previously on March 19, 2012.

- On April 27, 2012, in the 40-252 Docket,[54] Montezuma filed a Legal Brief stating that the Commission did not have jurisdiction over the Kevlor contract, the two Nile River leases, or the Water Services Agreement because the Kevlor contract and Nile River leases had been entered into by Ms. Olsen rather than Montezuma, and the Water

[54] On the same date in the same docket, Staff filed Staff's Notice of Response to Procedural Order analyzing the Water Services Agreement and determining that it was a capital lease agreement requiring Commission approval.

Services Agreement was an operational agreement with a purchase option and not an issuance of indebtedness.

- On April 30, 2012, at a joint procedural conference in the 40-252 Docket and the Complaint Docket, Montezuma acknowledged that the Water Services Agreement would be considered a capital lease, and Montezuma indicated that it would be making a choice, following by appropriate filings, concerning how it desired to finance its arsenic treatment facilities.

- On October 25, 2012, in the Consolidated R&F Docket, Ms. Olsen filed Insufficiency Submittals & Amendments to its rate application, including an affidavit regarding the notice to its customers of its amended rate application, and an attachment labeled "Lease Agreement," including a copy of the Nile River lease signed by Ms. Olsen for Montezuma on March 22, 2012, and by Mr. Torbenson for Nile River on March 23, 2012, but omitting Rider No. 2, and a copy of the Financial Pacific lease signed by Ms. Olsen on May 2, 2012, with no first payment due date on page 1 of 5 and no page 5 of 5. The document did not include a service list, and it was not filed by counsel.

- On January 14, 2013, in the Consolidated R&F Docket, Mr. Dougherty made an extensive filing that included, *inter alia*, two different sets of executed lease agreements with Nile River, one identifying Ms. Olsen as the lessee and the other identifying Montezuma as the lessee.

- On January 15, 2013, in the Consolidated R&F Docket, Mr. Dougherty filed, *inter alia*, a copy of a UCC Financing Statement filed with the Secretary of State on May 9, 2012, showing the existence of a lease dated April 3, 2012, with Montezuma as the debtor, Wells Fargo Capital Finance, LLC, as the secured party/lessor, and Financial Pacific as the assignor. Mr. Dougherty also made another filing including a copy of a UCC Financing Statement filed with the Secretary of State on August 31, 2012, showing the existence of a lease with Montezuma as the debtor, Nile River as the secured party/lessor, and an arsenic building as collateral.

- On February 25, 2013, at a joint procedural conference held in the 40-252 Docket, the Complaint Docket, and the Consolidated R&F Docket, Montezuma stated that the arsenic treatment facility was operating and that its water supply was meeting ADEQ standards; identified the Nile River lease and the Financial Pacific lease as the genuine leases; and was unwilling to characterize the leases as capital leases. The cases were consolidated for all purposes going forward the next day.

- On March 21, 2013, Mr. Dougherty filed in this matter a complete copy of the 5-page Financial Pacific lease dated April 2, 2012, and including a first payment due date of April 15, 2012, on page 1 of 5, as well as an Equipment List page.[55]

- On April 12, 2013, Montezuma filed in this matter a Notice of Filing Financing Applications, including a copy of the Nile River lease without Rider No. 2 and a copy of the Financial Pacific lease dated May 2, 2012, and not including a payment due date for the first payment on page 1 of 5, but including page 5 of 5. Montezuma stated that the Nile River lease was not a capital lease.

- On April 15, 2013, Mr. Dougherty filed in this matter a complete copy of the Nile River lease, including Rider No. 2, and a complete copy of the 5-page Financial Pacific lease dated April 2, 2012, and including a first payment due date of April 15, 2012, on

[55] Dougherty NOF 3/21/13

page 1 of 5.[56]

- As hearing exhibits, Montezuma for the first time provided copies of the Nile River lease with Rider No. 2 and of the Financial Pacific lease with all five pages and a first payment due date of April 15, 2012, on page 1 of 5.[57]

Ms. Olsen testified that she worked with Odyssey Financial to obtain financing for the arsenic treatment facilities and requested that the leases be personal leases in Ms. Olsen's name, because she wanted to make sure she could "meet the deadlines." (Tr. at 90-92.) She stated that when she received the original leases, there were two of them, both with Nile River. (Tr. at 92.) Then, she says, she received another set of leases, one for Nile River and the other for Financial Pacific (although she says she did not see Financial Pacific named on it). (Tr. at 92.) Ms. Olsen stated that one set of leases came in the mail and one set in an email, but did not remember from whom. (Tr. at 92.) Ms. Olsen asserted that neither she nor Montezuma had any role in drafting or writing the terms of the leases and that neither she nor Montezuma had tried to "pull a fast one" with the Commission. (Tr. at 92-93.) Ms. Olsen asserted that Odyssey Financial never explained to her that the lease agreements would be with Nile River and Financial Pacific, and that when the leases came in the mail, she did not know that they had come from Odyssey, but felt that she was "forced to sign whatever they would give [her]." (Tr. at 92-93.) Ms. Olsen further stated that she did not know who signed for Nile River on the Nile River lease agreement dated March 16, 2012, and that she believed the signature for Nile River was an authorized signature. (Ex. A-2 at 33.) Ms. Olsen acknowledged, however, that the actual Nile River lease agreement is the one dated March 22, 2012, and signed by John Torbenson for Nile River and by Ms. Olsen for Montezuma. (*Id.*) Ms. Olsen provided the following explanation of the circumstances surrounding the different versions of the Nile River lease agreement:

> At that time, MRWC faced substantial pressure from ADEQ to address the arsenic problem. MRWC attempted to find financing for the arsenic treatment facilities and Odyssey Financial provided the only available option. In turn, I signed both lease agreements with Nile River dated March 16, 2012. As originally proposed, I intended to proceed with the personal leases with Nile River in order to expedite the financing and construction of the arsenic facilities. Subsequently, however, Nile River informed me that it could not enter a lease with me personally and that the

[56] Dougherty SOF 4/15/13.

[57] The copies provided by Montezuma did not include the Equipment List for and had obscured the other typed date on the first page of the Financial Pacific lease. (*See* Ex. A-10.)

> Company needed to be party to the agreement. Odyssey Financial then provided the March 22, 2012 lease agreement between MRWC and Nile River.
>
> I acknowledge that the Company should have docketed the March 22, 2012 lease agreement between MRWC and Nile River and sought Commission approval. MRWC apologizes for that omission. The Company also acknowledges that the Nile River lease agreement is a capital lease based on Rider 2. Unfortunately, MRWC did not have a copy of Rider 2 in its files. In any event, the Company submitted the March 22, 2012 Nile River lease agreement for Commission approval in its Notice of Filing Financing Applications on April 12, 2013. MRWC also docketed that lease agreement and the May 2, 2012 lease agreement with Financial Pacific with the Commission on October 26, 2012 in Docket No. 12-0204.[58]

Ms. Olsen testified that during the period of February 2012 through final installation of the arsenic treatment system in November 2012, she was "getting approximately 5 hours of sleep each week due to the stress caused by the arsenic issues and Mr. Dougherty's efforts to undermine the Company." (Ex. A-2 at 34.) Ms. Olsen stated that during the period when the lease agreements were signed, Montezuma was "under immediate orders and pressure from ADEQ to install an arsenic treatment system" and had been told by ADEQ that it would be fined $150,000 if it failed to do so. (*Id.* at 35.) Ms. Olsen stated that Montezuma did not actually start paying on the leases until later, with payments to Financial Pacific commencing in October 23, 2012, and payments to Nile River commencing on December 17, 2012. (*Id.*) Prior to that date, she stated, she paid on the leases out of her personal checking account; she also stated that the deposits for the leases were paid out of her checking account. (*Id.*)

To explain how there came to be two versions of the Financial Pacific lease, dated April 2012 and May 2012, Ms. Olsen stated:

> Both of those lease agreements were provided to MRWC and me by Financial Pacific. I did not draft those lease documents—rather they were provided by Financial Pacific. That lease is not a contract document or form created by MRWC. Odyssey Financial had originally provided an undated lease agreement to MRWC, which was signed by me. Subsequently, I spoke with a representative of Financial Pacific and was advised that it would take 30-60 days to finalize the agreement. As a result, Financial Pacific provided two copies of the lease agreements dated April 2, 2012 and May 2, 2012. Representatives of Financial Pacific advised me that the agreement could be dated in April or May. At the time, MRWC focused on getting the financing in place for the arsenic treatment plant. For these reasons, I considered the May 2012 Financial

[58] Ex. A-2 at 33-34.

> Pacific lease as the final agreement. I should also mention that the April 2012 and May 2012 Financial Pacific lease agreements have identical terms and conditions.
>
> The Company acknowledges that the Company should have docketed the lease agreements and apologizes for the mistake. The Company did not have any ulterior or improper motive. MRWC corrected that omission by docketing those agreements in October 2012 and then seeking financing approval for those leases in April 2013. The Company was subject to sanctions and penalties by ADEQ for failure to resolve the arsenic treatment problem and believed that it was necessary to enter the lease agreements for the arsenic treatment facility. Further, neither the Commission nor any customers have suffered any harm as a result of the lease agreements with Nile River Financial Pacific [sic] and, in fact, customers have benefitted from construction and operation of the arsenic treatment facility. The Company intended that the Commission would review the terms and conditions of that lease in its pending rate case. MRWC also contacted staff to inform them that the personal leases were not preferable because Mr. Dougherty raised objections about lack of Commission review. In turn, the Company entered the leases with the clear intent of submitting them for Commission review and approval.[59]

Both Mr. Torbenson and Ms. Richards from Odyssey[60] testified at the hearing in this matter. Mr. Torbenson, the owner of both Odyssey and Nile River, explained that Odyssey serves as a broker and Nile River as a lender. (Tr. at 979-80.) Odyssey's process begins when an equipment dealer calls about a potential client for financing and provides information for a credit decision. (*Id.*) Mr. Torbenson makes the credit decision for Nile River, and Financial Pacific, which does larger deals, makes its own credit decision. (*Id.*) Odyssey then creates the financing documents and emails them to the client for signature. (*Id.*) The client signs the documents and then sends them back to Odyssey, generally by mail. (Tr. at 979-80; 988-89.) After the signed documents are received back, Nile River and/or Financial Pacific send the dealer any funds required up front, the equipment is installed through the dealer, and the client notifies Nile River and Financial Pacific that the equipment has been installed and that it is okay to pay the balance. (Tr. at 979-80.) Nile River and Financial Pacific then pay the dealer the balance due. (*Id.*)

Mr. Torbenson recalled that Ms. Olsen requested for the leases to be created in her name personally, to allow her to rent the facilities to her company, but that Odyssey's attorney told Mr. Torbenson that personal leases could not be done. (*See* Tr. at 965, 980.) Mr. Torbenson recalled that

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[59] Ex. A-2 at 35-36.

[60] As of the hearing, Ms. Richards no longer worked for Odyssey, but instead for a different financial company. (Tr. at 990-91.)

Ms. Olsen was sent an unsigned personal lease agreement with Nile River for the arsenic treatment building, but he was not sure whether such a lease agreement had been sent for the arsenic treatment system because it was funded by Financial Pacific, and Nile River does not usually do leases that large. *(See* Tr. at 965, 981.) Mr. Torbenson testified that Ms. Richards handled all the documentation, but he believed documents are sent to every client by email, so that the clients can print them off, sign them, and send back an original in hard copy. (Tr. at 981-82.) Mr. Torbenson stated that he notified Ms. Olsen that the personal leases could not be done and then sent her the leases for Montezuma. (Tr. at 965-66.) Mr. Torbenson stated that he had seen the two personal leases between Ms. Olsen and Nile River in the file, signed by Ms. Olsen and signed by someone else whose signature he did not recognize but who was not from his company. (Tr. at 975-76, 982-83, 987-88.) Mr. Torbenson explained that only he is authorized to sign for his company, and it is not his signature. (Tr. at 975-76, 983.) Mr. Torbenson stated that both the Financial Pacific lease and the Nile River lease for Montezuma were emailed to Ms. Olsen and then returned to Odyssey after having been signed. (Tr. at 966.) Mr. Torbenson then signed the Nile River lease, and the Financial Pacific lease was sent along to Financial Pacific. (Tr. at 967.) Mr. Torbenson generally dates an agreement with the date that he signs it. (Tr. at 984.) Odyssey generally does not send its customers a copy of their lease agreements unless requested to do so. (Tr. at 967-68.) According to Mr. Torbenson, the March 22, 2012, lease between Nile River and Montezuma is the effective lease, and Financial Pacific has not complained to him about its lease with Montezuma. (Tr. at 972, 978; see Ex. C-20.)

Ms. Richards recalled that she created the personal lease agreements to send to Ms. Olsen because Mr. Torbenson requested that she do so, and that she emailed only the first pages of the personal lease agreements to Ms. Olsen along with the complete multipage lease agreements for Montezuma, although she had been informed by Mr. Torbenson that only the Montezuma leases were to be executed. (Tr. at 993-94, 998, 1000-01.) Ms. Richards stated that Mr. Torbenson would have informed Ms. Olsen about not being able to use the personal leases. (Tr. at 994.) Ms. Richards also stated that Odyssey did not have any copies of the personal leases until Mr. Dougherty contacted Odyssey and provided them, as signed by Ms. Olsen and signed with what appears to be "Robin

Richards." (Tr. at 992, 995, 999-1000.) Ms. Richards stated that she did not sign the personal lease agreements and that she did not know who did sign them. (Tr. at 992.)

At Mr. Dougherty's request, a Commission subpoena was issued to Financial Pacific to obtain its records regarding its lease with Montezuma. *(See* Ex. C-49.) According to the cover letter and attached lease agreement provided by Financial Pacific, Montezuma's lease with Financial Pacific has an April 2, 2012, date under Ms. Olsen's signature on the first page and contains a first payment due date of April 15, 2012, on the first page. *(See* Ex. C-14.) The lease agreement was signed by Ms. Olsen and Gregory Olsen as guarantors on March 22, 2012. (*See id.*) The lease agreement also includes an Equipment List page that was signed by Ms. Olsen for Montezuma and is dated April 2, 2012. (*See id.*) The cover letter from Financial Pacific's Legal Department indicates the following regarding the date of its lease with Montezuma and a copy of a May 2, 2012, Financial Pacific lease agreement that Mr. Dougherty had provided to Financial Pacific:

> Please note the verbiage on our UCC states the agreement was dated April 3, 2012, however this is the date the agreement was booked. As you can see on page 5 of the agreement, the lease was actually dated March 22, 2012. The front page of the agreement has a typed date of 4/2/12. It is our policy to use the date on the confirm call to fill in any date fields left blank at the time of signing. I have included a copy of the confirm call for your reference.
>
> The enclosed lease agreement is the only lease agreement we have on file for Montezuma Rimrock Water Company. The agreement you provided with a typed date of 5/2/2012 appears to be an unauthorized modified version of the original. We did not type the date of 5/2/2012 on this agreement. The lease you sent me is also missing page 5 of the agreement.[61]

In an email sent to Mr. Dougherty by Financial Pacific's Legal Department, Financial Pacific stated that Odyssey sent the documents to Financial Pacific without any typed dates on them and that Financial Pacific completed the confirm call in house and then used the confirm call date to fill in the blank date fields on the lease agreement. (Ex. C-49.) Financial Pacific also stated that only one lease agreement was provided to its customer, not one for April and one for May; that the April 2, 2012, agreement is the true and correct copy of the lease; that any other lease document is an "unauthorized

[61] Ex. C-14.

modified version of the original lease"; and that Ms. Olsen's assertion that representatives of Financial Pacific had told her that the agreement could be dated in April or May was "not a true statement." (Ex. C-49.)

Ms. Olsen has not explained why she signed both the one-page personal leases between herself and Nile River and the multipage Nile River and Financial Pacific leases, but only sent the signed and dated multipage Nile River and Financial Pacific leases back for the lessors. Ms. Richards testified that the lease documents were all sent to Ms. Olsen in a single email and that Odyssey did not have a signed copy of the personal leases in its files until a copy was sent by Mr. Dougherty. Ms. Olsen has not explained why the personal leases were only provided to the Commission, not to Odyssey. Nor has Ms. Olsen explained how the one-page personal leases came to be signed by "Robin Richards," when they had been sent to her unsigned in an email from Robin Richards, whose testimony was credible. Ms. Olsen was the person who had control over the documents after they had been emailed to Montezuma and after they had been signed by her. Ms. Olsen also has not explained why Montezuma did not have a copy of Rider No. 2 in its files, when Ms. Olsen had received Rider No. 2 and signed it with the other lease documents, or why she and Montezuma provided the Commission incomplete copies of the Financial Pacific lease with dates that did not match the dates of the official Financial Pacific lease. Financial Pacific identified the lease documents with the May 2, 2012, date as an "unauthorized modified version" of the lease and Ms. Olsen's assertion that she had been told either April or May was an option "not a true statement." No one has questioned the validity of the correspondence from Financial Pacific as to the facts of the lease arrangement between it and Montezuma.

The evidence supports Mr. Dougherty's assertion that the invalid one-page lease documents were signed by Ms. Olsen and filed with the Commission to avoid the appearance that Montezuma had entered into capital leases creating long-term debt that required Commission approval, at a time when Montezuma was desperate to comply with the ADEQ Consent Order deadline of April 7, 2012, for Montezuma to complete construction of the arsenic treatment system and submit an administratively complete application for an AOC for the treatment system. When Montezuma missed the deadline and received another NOV from ADEQ on April 11, 2012, Montezuma received

another brief extension, but was also aware that adverse action would be taken by ADEQ if it did not comply. This is the context in which Montezuma failed to reveal the true capital leases to the Commission and apparently also its own legal counsel, who filed a completely invalid Legal Brief based upon the personal lease agreements and the Water Services Agreement on April 27, 2012, and also took a completely spurious position at a procedural conference on April 30, 2012.[62] Montezuma did not reveal the leases with Nile River and Financial Pacific until incomplete and modified copies were filed with the Commission (and not copied to Mr. Dougherty in spite of his Intervenor status) on October 25, 2012, in the Consolidated R&F Docket. By this time, the arsenic treatment system had been completed and was on the verge of receiving an AOC. Had Mr. Dougherty not investigated further, obtaining copies of the valid and complete lease documents from the lessors and also their input as to the different versions of the leases, the Commission might never have seen or considered the true and complete capital leases that had been executed by Ms. Olsen for Montezuma in March 2012.

4. Resolution

Montezuma has entered into two separate lease agreements that have enabled Montezuma to install an arsenic treatment system and a building to house that system. As of the date of the evidentiary hearing, Montezuma had been making payments to both Nile River and Financial Pacific under those two leases. Both Nile River and Financial Pacific have provided to the vendor the funds made available under those leases, in return for which Nile River and Financial Pacific both have been promised repayment, with substantial interest.

Under A.R.S. § 40-301, as set forth previously, the Commission may not grant approval for a public service corporation to enter into long-term debt such as that represented by the lease agreements with Nile River and Financial Pacific, "unless it finds that such issue is for lawful purposes which are within the corporate powers of the applicant, are compatible with the public interest, with sound financial practices, and with the proper performance by the applicant of service

[62] Ms. Olsen has testified that she did not inform her attorney when she signed the leases for Montezuma, and she provided unclear testimony regarding whether she reviewed the brief before it was filed with the Commission. (Ex. A-2 at 12; Tr. at 349-55.)

as a public service corporation and will not impair its ability to perform that service." (A.R.S. § 40-301(C).) Additionally, A.R.S. § 40-302(A) requires the Commission to find that the issuance of indebtedness is reasonably necessary or appropriate for the purposes specified in the Commission's order, which are not, except as permitted in the order, wholly or in part reasonably chargeable to operative expenses or to income.

As a result of these statutory provisions, in order to approve the long-term debt created by the Nile River and Financial Pacific leases, the Commission would need to find (1) that the debt was issued for lawful purposes which are within the corporate powers of the applicant, (2) that the purposes of the debt are compatible with the public interest, (3) that the debt is compatible with sound financial practices, (4) that the debt is compatible with the proper performance by the applicant of service as a public service corporation and will not impair its ability to perform that service, (5) that the issuance of indebtedness is reasonably necessary or appropriate for the purposes specified in the Commission's order, and (6) that the purposes specified in the order are not chargeable to operative expenses or to income. To reach a conclusion, we will look at each of these in turn.

The debt created by the leases was issued for a lawful purpose within the corporate powers of the applicant—namely, to bring Montezuma's water into compliance with safe drinking water standards enforced by ADEQ. Thus, the first criterion is met.

The purposes of the debt are compatible with the public interest because the public interest is served by having Montezuma's customers provided with water that does not have arsenic concentrations exceeding the MCL for arsenic. Thus, the second criterion is also met.

Whether the debt is compatible with sound financial practices is a more complex issue. The law does not define "sound financial practices," and no Arizona cases directly address the issue, but we can look to prior Commission Decisions to determine the analysis that has previously been employed when this criterion was at issue. In the past, based upon Staff analysis, the Commission has looked primarily to the results the debt would have on a public service corporation's debt service coverage ratio ("DSC") and times interest earned ratio ("TIER"); the results the debt would have on the public service corporation's capital structure; and, in the context of arsenic MCL compliance, the public service corporation's access to capital and its need to comply promptly with changing

regulations. (*See, e.g.,* Decision No. 68693 (May 5, 2006).[63]) In this case, Staff has recommended adoption of rates and charges that have been created specifically to cover the lease payments, essentially as though they were operating expenses rather than long-term debt payments. (*See* Tr. at 1073-74.) As a result, Staff has not provided a schedule calculating the DSC and TIER that would result if rates were set in the usual manner[64] and lease payments were factored in as long-term debt payments. Based upon TY total operating revenue of $101,276 and minimally adjusted TY total operating expenses of $83,266,[65] however, it appears that the $17,736.60 in total lease payments would result in operating income of $313.40. (*See* Ex. S-2 at Sched. GWB-1, Sched. GWB-3.) If Montezuma's TY depreciation expense were considered as available cash rather than an expense that must be paid, that would increase the amount available to Montezuma for operations by another $7,367. These figures suggest that Montezuma would still be able to break even with the debt from the two leases, even if its rates were not increased to cover them. This does not, however, factor in the cost of arsenic media, which Staff estimated at $8,851 per year. (*See* Ex. S-2 at Sched. GWB-3.)

Staff has concluded that the long-term debt created by the lease agreements is compatible with sound financial practices. (*See* Ex. S-1 at 22, att. A at 21.) However, the terms of the leases (36 months for the arsenic treatment building and 60 months for the arsenic treatment system) do not provide for good maturity matching, i.e., the lengths of the financings do not approximately equal the lives of the assets acquired. Nevertheless, in consideration of the high interest rates available to Montezuma for financing the arsenic treatment system and building, the choice of shorter financing terms was reasonable, provided that Montezuma can generate sufficient cash flows to meet the obligations. As further discussed below, under the rates authorized herein, Montezuma will have the capacity to meet its obligations for the portion of both leases we are currently recognizing in rate base, and without any surcharge or other ratepayer subsidy. Thus, the financings are compatible with sound financial practices.

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[63] Official notice is taken of this Decision.

[64] By this, we mean through applying a fair value rate of return to a fair value rate base to establish a revenue requirement.

[65] This figure is determined by taking Montezuma's unadjusted TY expenses and adjusting only to remove $10,291 in sales tax collections from operating expenses, as these are pass-through amounts only. (*See* Ex. S-1 at Sched. GWB-3.)

Further, as noted above, in the context of arsenic MCL compliance, the Commission previously has considered a public service corporation's access to capital and its need to comply promptly with changing regulations when analyzing the financial soundness of the public service corporation's proposed debt. In this case, the evidence establishes that when Montezuma chose to obtain financing through Odyssey, Montezuma had the choice of attempting to start over with WIFA (as Montezuma's project had changed because it could not use Well No. 4) or obtaining financing through Odyssey. Montezuma had attempted to obtain a private bank loan, but had been unsuccessful.[66] There is no evidence to suggest that Montezuma had another option for funding construction of the arsenic treatment system at that time, as Montezuma's access to capital is very limited. ADEQ was pressuring Montezuma to comply with the law or face an unquantified penalty[67] because of Montezuma's delay in coming into compliance with the arsenic MCL, and Montezuma chose to go with the most expedient[68] financing process available, which was Odyssey.

Because the debt has enabled Montezuma to begin providing proper service from a public health perspective, the long-term debt created by the leases is compatible with Montezuma's proper performance of service as a public service corporation, and will not impair its ability to perform that service. For years, Montezuma has been providing its customers water that did not comply with the EPA and ADEQ MCL for arsenic. The adequacy of Montezuma's service has undeniably been improved because its water supply now complies with safe drinking water standards. The fourth criterion is also met.

As to the fifth criterion, we find that the issuance of the indebtedness was reasonably necessary or appropriate under the circumstances because, as stated above, Montezuma's actions had put it in a position where an unquantified penalty would have placed an additional economic burden on Montezuma and potentially its customers.

Finally, as to the sixth criterion, we find that none of the long-term debt created by the Nile River lease or created by the Financial Pacific lease was chargeable to operating expenses. Staff

[66] Contrary to Montezuma's assertions to the contrary, the evidence does not support that Montezuma was able to obtain private financing for its arsenic treatment plan without increasing its revenues.

[67] There is no credible evidence that ADEQ had threatened Montezuma with a particular amount.

[68] Montezuma was certainly aware that WIFA would not have provided Montezuma with funding until after the Commission had approved the long-term debt associated with the funding.

determined that $16,280 of the $38,000 cost for the arsenic treatment system was attributable to arsenic media costs and should be recovered through chemical expenses (over a period of two years, consistent with its estimated life) rather than in rate base. *(See* Ex. S-2 at 5; Ex. S-1 at 8.) This would indicate that those arsenic media costs were included in operating expenses. Because the arsenic media has an expected life exceeding 12 months, however, and a cost that is financially material to Montezuma, the NARUC Uniform System of Accounts ("NARUC USOA") indicates that it should be capitalized rather than expensed. (NARUC USOA.[69]) Additionally, as noted above, Staff has determined that only 37 percent of the cost of the 150 GPM arsenic treatment system itself should be recovered through rates because the remaining 63 percent of the arsenic treatment system represents excess capacity. (Ex. S-1 at 13, 28, Sched. GWB-2, att. A at 16; Ex. S-2 at Sched. GWB-2.)

Based upon the analysis that the Commission generally uses to determine whether long-term debt should be approved, the Commission would approve at least a portion of the $46,000 of Montezuma's long-term debt to obtain and install an arsenic treatment system and a building to house that arsenic treatment system. In this matter, however, the Commission must also consider the manner in which Montezuma ultimately revealed this long-term debt to the Commission and requested approval for it, and whether "rewarding" the company for the way it has gone about its duties as a public service corporation is in the public interest. We have serious concerns, including that Montezuma, and Ms. Olsen individually, misled the Commission both actively and through omission by providing incorrect information about Montezuma's plan to remediate its arsenic level and about the status of its leases; by filing personal leases that Ms. Olsen knew were not valid and contained forged signatures; by failing to reveal that Montezuma had entered into leases and having counsel make factual assertions that Montezuma and Ms. Olsen knew not to be true and arguments that Montezuma and Ms. Olsen knew to be invalid; by filing incomplete leases; and by filing leases with altered dates. While Ms. Olsen has professed that she is innocent of any wrongdoing, has attempted to explain how there came to be multiple versions of leases, and has testified that she

[69] Official notice is taken of the provisions of the NARUC USOA for Class C Water Utilities, with which the Commission's rules require Class D water utilities such as Montezuma to comply. Under the NARUC USOA, a utility with annual water operating revenues of less than $200,000 is classified as Class C.

desires to know as much as anyone who signed the personal leases as "Robin Richards," Ms. Olsen's testimony in this area is not credible.

Mr. Dougherty aptly describes the Commission's need to make a "difficult choice" between, on the one hand, retroactively approving the debt that supports the arsenic treatment system and provides safe drinking water to the public and, on the other hand, denying approval of the debt based upon Montezuma's failure to comply with Commission statutes, regulations, and Procedural Orders. (*See* Dougherty Reply Brief at 18.) Mr. Dougherty asserts that denial would represent the Commission's "enforcing its laws and regulations and therefore the integrity of the agency" and, further, that denial would keep Montezuma from attaining compliance and would render Montezuma unable to obtain future rate increases, which he asserts would result in a benefit to ratepayers because ratepayers benefit from not being burdened with rate increases. (*Id.*)

In any case in which a public service corporation may have engaged in conduct of questionable ethics, such as the Commission sees with companies that engage in self-dealing or that file with the Commission documents that are incomplete or false, there is a tension between the Commission's desire and need to enforce its own economic regulatory requirements, which are designed to protect the public interest, and the Commission's desire and need to ensure that persons within a public service corporation's service area continue to receive adequate service at reasonable rates. This tension requires the Commission to balance the benefit of penalizing a public service corporation, to deter further misconduct, against the adverse impacts that may occur if the penalty jeopardizes the public service corporation's continued viability and thus the service upon which its ratepayers rely, thereby damaging the blameless ratepayers. In this case, although Montezuma and its owner have been not been honest with the Commission, and have taken spurious positions through counsel as well,[70] we conclude that the public health benefits to Montezuma's ratepayers from Montezuma's obtaining financing of the arsenic treatment system and associated building outweigh Montezuma's failure to comply with its obligation to obtain Commission approval prior to taking on

[70] Ms. Olsen has testified that she did not inform her attorney when she signed the leases for Montezuma, and she provided unclear testimony regarding whether she reviewed the brief before it was filed with the Commission. (Ex. A-2 at 12; Tr. at 349-55.)

long-term debt. Thus, although Montezuma violated A.R.S. §§ 40-301 and 40-302, we find that retroactive approval of a portion of the financing is appropriate.

While Staff has recommended that the long-term debt represented by the leases be approved as to the entire amount, this recommendation is not consistent with Staff's determination that only 37 percent of the cost of the arsenic treatment system itself (*i.e.*, 37 percent of the $21,720 that is left when the arsenic media cost of $16,280 is deducted) should be included in rate base as used and useful, non-excessive plant. It is not consistent with standard ratemaking principles to approve the long-term debt associated with plant considered to constitute excess capacity. Thus, we will disallow $13,684 (63 percent of $21,720) of the $46,000 financing request. Accordingly, while we find that Montezuma violated A.R.S. §§ 40-301 and 40-302, for the reasons set forth herein, we will approve financing in the amount of $24,316 as to the arsenic treatment system and in the amount of $8,000 for the arsenic treatment system building.

V. The Rate Docket

In its rate application, as amended, Montezuma used a 2011 test year ("TY") and showed TY revenue of $101,276 and total operating expenses of $93,557, resulting in operating income of $7,719. (Ex. A-4; Ex. A-6.) Prior to accepting Staff's recommendations, Montezuma proposed a revenue increase of $76,800, or 75.83 percent over TY revenues. (Ex. A-6; Ex. A-23.) Ms. Olsen testified that Montezuma's proposed revenue increase was based on operating expenses and operating margin and that Montezuma needs a rate increase to cover the costs and expenses associated with obtaining its arsenic treatment system, replacing its storage tanks, obtaining a pressure tank, adding Well No. 4 to its system, and upgrading infrastructure dating from 1969. (Ex. A-2 at 5-6.) Montezuma also asserted that it had no operating margin, no funds available for normal maintenance and repairs, and no funds available for employee wages and employee-related expenses. (*Id.* at 9.) Although Montezuma initially did not propose specific rates, it ultimately proposed to have the monthly service charge for all but one meter size increased by $30[71] and to have each commodity rate increased by $0.50 per thousand gallons. (Ex. A-6; Ex. A-23.) Montezuma also proposed a "JD

[71] The monthly minimum charge increase proposed for 2" meters was $20.

Legal Surcharge" of $6.57 per customer per month to cover legal expenses of $47,298.09 that Montezuma claimed it had accrued over a three-year period beginning in January 2010 and that it stated were attributable to Mr. Dougherty's intervention in this matter. (Ex. A-6 at 4; Ex. A-23.)

Montezuma requested to have its fair value rate base ("FVRB") determined using its original cost rate base ("OCRB"). (Ex. A-6.) In its last rate case, Montezuma's OCRB/FVRB was determined to be $4,084 and too low to be useful in establishing its rates. (Decision No. 71317 at 10.) Montezuma asserted herein that system improvements with a total cost of approximately $175,000 had been made since its last rate case, in the form of an arsenic treatment system, a storage building to house the arsenic treatment system, infrastructure for Well No. 4, line replacement, and fire hydrant installation. (Ex. A-2 at 7.)

After making a number of rate base adjustments, Staff determined Montezuma's adjusted OCRB/FVRB to be $67,414. (Ex. S-2 at Sched. GWB-2.) Staff reduced plant in service by $91,286 overall through adjustments that included removing the site for Well No. 4; adding the arsenic treatment facility building; removing Well No. 2, which is no longer in service; adding a small amount of pumping equipment; reclassifying water treatment equipment to water treatment plant; adding 37 percent of the arsenic treatment facility costs to water treatment plant, to exclude media and exclude the portion of the arsenic treatment facility that Staff classified as excess capacity; and reclassifying distribution reservoirs and standpipes to storage tanks. (Ex. S-1 at 10-14, Sched. GWB-2; Ex. S-2 at Sched. GWB-2.) Staff also decreased accumulated depreciation, eliminated advances in aid of construction ("AIAC"), decreased customer deposits, increased accumulated amortization of contributions in aid of construction ("CIAC"), and included working capital calculated using the formula method. *(See* Ex. S-1 at 10, Sched. GWB-2; Ex. S-2 at 4, Sched. GWB-2.)

Except as to the adjustment made to exclude arsenic media, as mentioned above, we agree with Staff's adjustments of rate base items. Because the arsenic media has an expected life exceeding 12 months, and a cost that is financially material to Montezuma, the NARUC USOA indicates that it should be capitalized rather than expensed. Thus we will include the $16,280 representing the arsenic media cost in rate base, to be depreciated 50 percent per year. As a result, we find that Montezuma's FVRB is equivalent to its OCRB and is $81,567.

Staff agreed with Montezuma's TY revenue figure of $101,276, but recommended a number of TY operating expense adjustments, increasing overall TY operating expenses by $32,895 and resulting in a TY operating loss of $25,176. (Ex. S-2 at Sched. GWB-3.) Staff's adjustments included an increase in salaries and wages to reflect what Staff described as a normalized level of salary expense;[72] reclassification of purchased water expense to office supplies and expense; a decrease in purchased power expense to reflect the amount supported by Montezuma's documentation; an increase in chemicals expense to include a normalized amount of arsenic media costs; a decrease in office supplies and expense to reflect the amount supported by Montezuma's documentation; an increase in outside services expense to reflect annualized non-legal expenses supported by Montezuma's documentation, plus approximately 75 percent of the legal expenses reported by Montezuma and determined by Staff to be attributable to legal matters aside from the rate case, which Staff amortized over four years; an increase in water testing expense to reflect Staff's calculation of a normalized water testing cost; a decrease in general liability insurance expense to reflect the amount supported by Montezuma's documentation; an increase in rate case expense to reflect a normalized level of estimated rate case expense; an increase in depreciation expense to reflect Staff's recommended depreciation rates and plant balances; elimination of taxes other than income to reflect sales taxes as a pass-through rather than an operating expense; and an increase in income tax expenses in accordance with the Commission's recently adopted policy to allow income tax expenses for pass-through entities such as limited liability companies. (Ex. S-1 at 10-12, Sched. GWB-3; Ex. S-2 at 4, Sched. GWB-3; Ex. S-4.) Additionally, Staff has recommended that a requirement imposed in Decision No. 67583, for Montezuma to obtain and maintain a $30,000 performance or surety bond, be eliminated so that Montezuma will no longer incur the expense for that bond, which was expected to increase to $4,500 per year. *(See* Tr. at 109-10, 1032-33.)

We agree with Staff that there should be annual operating expense allowed for salaries and wages, because Ms. Olsen, and others, provide regular services to Montezuma and should be

[72] Ms. Olsen testified that Montezuma did not pay any salaries and wages during the TY. (Tr. at 388-94; Ex. C-83.) However, payments were made to Ms. Olsen as "Patricia Arias" as an independent contractor under a separate NARUC account. (*See id.*) Additionally, Ms. Olsen made numerous payments for private expenses directly from Montezuma accounts as a way of paying herself in kind for services provided to Montezuma and as a means of drawing cash out as the owner of Montezuma. (*See, e.g.,* Tr. at 401-12.)

compensated for those services. It is not appropriate for Montezuma to pay Ms. Olsen as an independent contractor, and we instruct Montezuma to cease that practice. As Montezuma's accountant informed Ms. Olsen, payments made by a business to the owner of the business should be reported as wages, draws against the capital account, or repayment of loans from the owner to the business. *(See* Ex. C-111.) In 2012, Montezuma issued 50 checks to Patricia Arias for a total of $15,410, in the account for contractual services-other. (*Id.*) We find that the $19,772 recommended by Staff is a reasonable and appropriate amount for salaries and wages, and we will approve it and further will prohibit Montezuma from making "outside services" payments to Ms. Olsen/Ms. Arias or any of her family members, all of whom must be paid through salaries (at an established and documented level for specific and documented work responsibilities) or wages (at an established and documented hourly rate and for specific and documented hourly work performed).

As stated previously, we find that arsenic media costs should not be treated as chemical expenses, and we will instead capitalize and include the arsenic media costs in rate base and adopt a depreciation rate of 50 percent to coincide with the estimated life of the arsenic media. This does not impact Montezuma's projected total operating expenses, however, because the depreciation on the arsenic media is equivalent to the chemical expense level recommended by Staff.

We also will modify Staff's allowance for non-rate case legal expenses. Staff has recommended that Montezuma be permitted to recover a total of $41,339.58 in non-rate case legal expenses over a period of four years, amounting to $10,334.89 per year. (Ex. S-4.) This represents approximately 75 percent of the total expense requested by Montezuma, which included $29,032.50 billed by Montezuma's former counsel and $25,669.15 billed by Montezuma's current counsel. The breakdown provided by Staff for these expenses was as follows:

	Total Requested	Staff Allowed	Staff Allowed
Douglas Fitzpatrick			
Matter 1: ADEQ/Yavapai County Matters	$1,085.00	50%	$542.50
Matter 2: ACC proceedings ATS/financing issues	$16,467.75	100%	$16,467.75
Matter 3: Superior court suit brought by John Dougherty & Fred Shute	$10,737.25	100%	$10,737.25
Matter 4: Justice Court Proceedings, Order of protection against John Dougherty	$742.50	100%	$742.50
Total	$29,032.50		$28,490.00

Fennemore Craig			
Matter 1: ADEQ/Yavapai County Matters	$13,884.55	50%	$6,942.28
Matter 2: ACC complaint re: ATS and financing issues	$11,814.60	50%	$5,907.30
Total	$25,699.15		$12,849.58

While we realize that Montezuma has incurred an unusual amount of legal expenses over the past several years, and that it is appropriate to allow Montezuma some recovery for those legal expenses through its rates, we do not agree with Staff's determination of the amounts that should be allowed. To a great extent, Montezuma's non-rate case legal expenses are directly attributable to actions taken by Montezuma, or by Ms. Olsen, and it is unfair for Montezuma's ratepayers to suffer the consequences of choices made by Montezuma that proved to be expensive due to the disputes and legal and regulatory activities that they engendered, exacerbated, or prolonged.

Regarding Matter 1, we find that Montezuma should be permitted to recover only 30 percent of the legal expenses through rates. While Montezuma would have had some interaction with ADEQ for purposes of obtaining approval of its arsenic treatment system, the majority of the ADEQ-related activity can be attributed to Montezuma's failure to come into compliance with the arsenic MCL in a timely fashion, a status that had already occurred when Montezuma first encountered Mr. Dougherty late in 2009 and thus which cannot be attributed to him. As for the Yavapai County portion of the expenses related to Matter 1, those came about as a direct result of Montezuma's having placed Well No. 4 on the property obtained from Ms. Brunner without first having obtained a use permit authorizing commercial use of the property. Montezuma's customers should not be required to pay even 50 percent of the expenses incurred as a result of Montezuma's failure to comply with the law. We find that only 30 percent of the expenses associated with Matter 1 should be recoverable, amounting to $4,490.87.

Regarding Matter 2, described as the Commission proceedings regarding the arsenic treatment facility and financing issues, while Montezuma asserts that Mr. Dougherty has caused most of the expenses associated with this matter, as we have described above in reference to the leases, Montezuma has repeatedly made filings and taken positions that only created more questions and caused more activity in this matter. Had Montezuma chosen to be forthright and presented only complete and reliable information during the pendency of this matter, Montezuma's expenses

incurred would have been dramatically reduced. Likewise, if Montezuma had not engaged in gamesmanship[73] in terms of discovery activities and otherwise, Montezuma would have incurred much lower legal expenses as to Matter 2. In light of the extent to which Montezuma's expenses associated with Matter 2 can be attributed to Montezuma's not having participated in this matter in a forthright, courteous, and honorable manner, we find that only 30 percent of the expenses associated with Matter 2 should be recoverable, amounting to $8,484.71.

Regarding Matter 3, which is the lawsuit filed by John Dougherty and Fred Shute in Yavapai County Superior Court, asserting that the Yavapai County Board of Supervisors did not comply with the law when Montezuma was granted a conditional use permit for Well No. 4, in which Montezuma was named as a defendant and filed a counterclaim, we find that Montezuma should be permitted to recover 30 percent of the associated expense. While Montezuma had a right to defend itself, this lawsuit is another result of Montezuma's decision not to obtain a use permit from Yavapai County prior to installing Well No. 4, and Montezuma made a conscious decision to incur additional costs by bringing a counterclaim asserting that the Yavapai County Water Well Code was unenforceable under state law, an argument that was found to be without merit.[74] Thus, only $3,221.18 should be recoverable through rates.

Finally, regarding Matter 4, which was the Justice Court proceeding involving the Injunction Against Harassment as to Mr. Dougherty, we find that Montezuma should receive no recovery from ratepayers. As the Justice Court determined when the Injunction was dismissed, and as was evident in the proceedings before the Commission, Ms. Olsen "abused" this Injunction, using it "as a sword" rather than a shield and as a way to prevent interactions with Montezuma.[75] The Injunction served as an obstacle to the orderly process of this matter, resulting in delay and complications due to the

[73] An example of Montezuma's conduct is Montezuma's agreeing at an October 2011 procedural conference regarding a discovery dispute to allow Mr. Dougherty to review its records at counsel's office, and then rescinding that agreement, which provoked numerous filings and ultimately resulted in another procedural conference regarding the discovery dispute in November 2011. Other examples of Montezuma conduct that has resulted in delay and additional expense, not specifically related to discovery, are Montezuma's failure to claim its certified mail and Montezuma's failure to serve other parties with its filings.

[74] *See* Ex. C-57.

[75] *See* Ex. C-109 at 17, 27.

manner in which Ms. Olsen chose to wield it.[76] Ratepayers should not be held responsible for the expense associated with obtaining and misusing this device.[77]

As a result of these determinations, we find that $16,196.76 is a reasonable level of non-rate case legal expenses in this matter, which shall be normalized over a period of four years, resulting in an annual expense of $4,049.19.

Staff also allowed a total of $57,000 in rate case expense, amortized over a period of four years, resulting in annual rate case expense of $14,250. (Ex. S-1 at 15; Ex. S-2 at Sched. GWB-3.) While Montezuma has asserted that it accepts Staff's recommendations, Montezuma also has argued that it should be allowed a rate case expense of $92,725.50, amortized over five years, for a rate case expense of $23,181.38 per year. (Montezuma Brief at 9.) Montezuma argues that it was the decision to consolidate the rate case with the rest of this matter, to hold an evidentiary hearing, and to require briefs, coupled with Mr. Dougherty's involvement, that caused the legal expenses in this matter "through no fault of MRWC or its counsel" and in spite of "MRWC ma[king] every effort to avoid increased legal costs in the rate case."[78] (Montezuma Brief at 9-10.) While it is true that this matter is far more complicated and extended than the typical Class D rate case, "it would be patently unfair and unjust to force"[79] Montezuma's ratepayers to shoulder the entire responsibility for Montezuma's rate case expenses in this matter, because Montezuma's own conduct in this matter increased the level of Mr. Dougherty's concerns and thus filings[80] and created the need for an evidentiary hearing to include consideration of the rate case so that the Commission could obtain, to the extent possible,

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[76] As described previously, Ms. Olsen first revealed the Injunction to the Commission's security guard, resulting in delay at a Commission proceeding. Ms. Olsen also used the Injunction to attempt to have Mr. Dougherty prosecuted for sending her an email. (*See* Ex. C-59A; Tr. at 668.)

[77] We note for the record that twice during the evidentiary hearing in this matter, Mr. Dougherty earnestly requested that the Administrative Law Judge stop Ms. Olsen from winking at him or making faces at him. (Tr. at 655-56, 661.) Her "snarkiness" toward Mr. Dougherty was also noted during the hearing. (*See* Tr. at 351, 661.) Ms. Olsen's assertions that she feared or fears Mr. Dougherty lack credibility.

[78] Among other things, Montezuma does not recognize that its rate case expenses were also increased as a result of its having filed three financing applications for consideration in the rate case, after the rate application had already been determined sufficient, and its having presented arguments as to the characterization of the Nile River and Financial Pacific leases that were not based in fact. These factors all increase the amount of rate case expense incurred by Montezuma, through no fault of Montezuma's ratepayers.

[79] *See* Montezuma Brief at 10.

[80] For example, Mr. Dougherty's activities increased after Ms. Olsen and Montezuma filed invalid and incomplete lease documents and during the periods when Montezuma was less than forthcoming and also cut off Mr. Dougherty during discovery.

accurate and complete information upon which to decide what would be just and reasonable rates for Montezuma. We find that an appropriate level of rate case expense in this matter is $46,362.75. We approve recovery of this rate case expense through normalization over a period of four years, which results in an annual rate case expense of $11,590.69.

Staff recommended a revenue increase of $27,946 or 27.59 percent over TY revenues, which would produce total operating revenues of $129,222, and operating income of $2,770, for a 4.11-percent rate of return on Staff's adjusted OCRB/FVRB for Montezuma of $67,414. (Ex. S-2 at 4.) This revenue increase does not take into account the two surcharges for which Staff has also recommended approval.[81] Staff stated that its aim was to provide Montezuma adequate cash flow to pay its bills, including the full amount due for its arsenic treatment system, and Staff determined its total revenue requirement using a cash flow analysis. *(See* Ex. S-1 at 7; Ex. S-2 at 5, Sched. GWB-4.) Staff's cash flow analysis showed that Staff's recommended revenue requirement would result in an operating margin of 2.14 percent and rate of return of 4.11 percent when the Nile River lease and Financial Pacific lease obligations were considered, if the two surcharges were not authorized, and would result in an operating margin of 10.56 percent and rate of return of 22.14 percent if surcharges for both the Arias and WIFA loans were authorized. (Ex. S-2 at Sched. GWB-4; LFE S-5 at Sched. GWB-4.) Staff also determined that Staff's recommended revenue requirement with the two surcharges would result in a TIER of 2.84 and a DSC of 1.98. (Ex. S-2 at Sched. GWB-5.)

Notwithstanding its argument for additional rate case expenses, Montezuma has accepted Staff's recommended rates and charges, as well as the other recommendations made by Staff in its responsive testimony. *(See, e.g.,* Tr. at 109.)

Montezuma's present rates and the rates proposed by Montezuma and Staff are as follows:[82]

MONTHLY USAGE CHARGE:	Present Rates	Proposed Rates
5/8" x 3/4" Meter	$ 27.25	$ 30.00

[81] Staff has recommended approval of a surcharge intended to cover the annual cost for $18,541 in debt related to pressure tanks ("Arias Loan Surcharge") and has recommended approval of a surcharge intended to cover the annual cost for $108,000 in WIFA debt for additional storage tanks ("WIFA Loan Surcharge"). (*See* Ex. S-2 at 5, Sched. GWB-4.) Staff estimated the Arias Loan Surcharge at $1.65 per month and the WIFA Loan Surcharge at $3.01 per month.

[82] *See* Decision No. 71317; LFE S-5. Mr. Dougherty did not propose rates and charges.

3/4" Meter	40.88	45.00
1" Meter	68.13	75.00
1 1/2" Meter	136.25	150.00
2" Meter	218.00	240.00
3" Meter	436.00	480.00
4" Meter	681.25	750.00
6" Meter	1,362.50	1,500.00

COMMODITY RATES:
(per 1,000 gallons)

All Meter Sizes

First Tier – 1 to 4,000 gallons	$1.50	
Second Tier – 4,001 to 10,000 gallons	2.50	
Third Tier – Over 10,000 gallons	4.00	
First Tier – 1 to 3,000 gallons		$2.50
Second Tier – 3,001 to 9,000 gallons		4.17
Third Tier – Over 9,000 gallons		6.67

SERVICE LINE & METER INSTALLATION CHARGES:
(Refundable pursuant to A.A.C. R14-2-405)

	Current & Proposed Charges		
	Service Line	Meter	Total
5/8" x 3/4" Meter			
Same side of road	$ 370.00	$ 130.00	$ 500.00
Other side of road	670.00	130.00	800.00
3/4" Meter			
Same side of road	370.00	180.00	550.00
Other side of road	695.00	180.00	875.00
1" Meter			
Same side of road	400.00	225.00	625.00
Other side of road	775.00	225.00	1,000.00
1 1/2" Meter			
Same side of road	450.00	450.00	900.00
Other side of road	975.00	450.00	1,425.00
2" Meter Turbo			
Same side of road	550.00	900.00	1,450.00
Other side of road	1,450.00	900.00	2,350.00
2" Meter Compound			
Same side of road	550.00	1,575.00	2,125.00
Other side of road	1,825.00	1,575.00	3,400.00
3" Meter Turbo			
Same side of road	765.00	1,210.00	1,975.00
Other side of road	1,965.00	1,210.00	3,175.00
3" Meter Compound			
Same side of road	795.00	1,955.00	2,750.00
Other side of road	2,420.00	1,955.00	4,375.00
4" Meter Turbo			
Same side of road	1,055.00	2,120.00	3,175.00
Other side of road	2,980.00	2,120.00	5,100.00
4" Meter Compound			
Same side of road	1,095.00	2,930.00	4,025.00
Other side of road	3,495.00	2,930.00	6,425.00

6" Meter Turbo			
Same side of road	1,600.00	4,425.00	6,025.00
Other side of road	5,200.00	4,425.00	9,625.00
6" Meter Compound			
Same side of road	1,730.00	6,120.00	7,850.00
Other side of road	6,430.00	6,120.00	12,550.00

Charges differentiated by whether on same side of road as water main

SERVICE CHARGES:	Present Rates	Proposed Rates
Establishment	$40.00	$40.00
Establishment (After Hours)	$60.00	N/A
Reconnection (Delinquent)	$50.00	$50.00
Service Charge—After Hours at Customer Request	N/A	$35.00
Meter Test (If Correct)	$30.00	$30.00
Deposit	*	*
Deposit Interest	*	*
Reestablishment (Within 12 Months)	**	**
NSF Check	$25.00	$25.00
Deferred Payment (Per Month)	1.50%	1.50%
Meter Re-Read (If Correct)	$15.00	$15.00
Late Fee (Per Month)	***	***
Monthly Service Charge for Fire Sprinkler (All Meter Sizes)	****	*****

* Per Commission rule A.A.C. R14-2-403(B)

** Months off system times the monthly minimum, per Commission rule A.A.C. R14-2-403(D)

*** 1.50% of the unpaid balance, after 15 days

**** 1.00% of the monthly minimum for a comparably sized meter connection, but no less than $5.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

***** 2.00% of the monthly minimum for a comparably sized meter connection, but no less than $10.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

The typical monthly bill for a customer served by a 5/8" x 3/4" meter, with median or average usage, under Staff and Montezuma's proposed rates and charges (without surcharges), as compared to the current monthly bill for such usage, would be as follows:

	Current Bill	Proposed Bill	Dollar Increase	Percentage Increase
Average (5,192 gallons)	$36.23	$46.64	$10.41	28.73%
Median (4,112 gallons)	$33.53	$42.14	$8.61	25.68%

As discussed above, these proposed rates and charges include recovery for the Nile River and Financial Pacific lease payments, except as to arsenic media (for which recovery is also included, but on an annualized basis as an operating expense).

Rather than establishing rates for Montezuma based upon a cash flow analysis, we find that it is just and reasonable and in the public interest to set Montezuma's rates using a traditional rate of return methodology, as Montezuma's rate base is sufficient for such purposes.[83] Additionally, as stated previously, while we are adopting Staff's recommendations related to the WIFA Loan and authorization of a surcharge to pay such loan, with additional conditions imposed, we are not approving the Arias Docket financing herein and thus are not approving the associated surcharge recommended by Staff.

As a result of the adjustments that we are adopting herein, we find that the following are just and reasonable for Montezuma, and are in the public interest, and we will adopt them:

OCRB/FVRB:	$81,567
Adjusted TY Revenues:	$101,276
Adjusted TY Operating Expenses:	$117,577
Adjusted TY Operating Income:	($16,301)
Total Operating Revenues:	$126,783
Total Operating Expenses:	$117,577
Total Operating Income:	$9,206
Revenue Increase:	$25,507
Percentage Increase:	25.18%
Rate of Return on FVRB:	11.29%

MONTHLY USAGE CHARGE:

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[83] In its Exceptions to the Recommended Opinion and Order issued in this matter, Montezuma raised due process concerns because the rates and ratemaking methodology proposed by Montezuma and Staff were not adopted. Montezuma had actual notice that the Commission was not bound by the rates proposed by Montezuma, Staff, or any other party to this matter, through three separate Procedural Orders issued in this matter in which Montezuma was required to provide prescribed notice that included a statement, in bold capital letters, to the effect that the Commission is not bound by the parties' proposals and that the rates approved might differ from the rates proposed by Montezuma or other parties. (*See* Proc. Orders issued Nov. 8, 2012, Feb. 26, 2013, and Feb. 28, 2013.)

During the hearing in this matter, Staff provided testimony addressing ratemaking through application of a rate of return on rate base. (*See* Tr. at 873-76, 1046-47, 1066-67, 1069-74, and 1085.) Staff's schedules included the rate of return on rate base for each of Staff's different cash flow analyses and showed rates of return ranging from 4.11 percent to 22.14 percent. (*See* Ex. S-1 at Sched. GWB-4; Ex. S-2 at Sched. GWB-4; LFE S-5 at Sched. GWB-4.)

During the hearing in this matter, Montezuma presented documentary evidence and witness testimony and cross-examined the other parties' witnesses. At the conclusion of the hearing, Montezuma confirmed that it had received a "full and fair opportunity to provide [its] position in this case." (Tr. at 1093.)

Montezuma received actual notice and had an opportunity to be heard at a meaningful time and in a meaningful manner during the five days of evidentiary hearing in this matter, followed by briefing and an opportunity to address its position again through its Exceptions and at Open Meeting. There has been no denial of due process in this matter.

5/8" x 3/4" Meter	$ 28.00
3/4" Meter	42.00
1" Meter	70.00
1 1/2" Meter	140.00
2" Meter	224.00
3" Meter	448.00
4" Meter	700.00
6" Meter	1,400.00

COMMODITY RATES:
(per 1,000 gallons)

5/8 x 3/4" & 3/4" Meter	
First Tier – 1 to 3,000 gallons	$2.45
Second Tier – 3,001 to 9,000 gallons	4.95
Third Tier – Over 9,000 gallons	6.25
1" Meter	
First Tier – 1 to 24,000 gallons	$4.95
Second Tier – Over 24,000 gallons	6.25
1 1/2" Meter	
First Tier – 1 to 62,000 gallons	$4.95
Second Tier – Over 62,000 gallons	6.25
2" Meter	
First Tier – 1 to 101,000 gallons	$4.95
Second Tier – Over 101,000 gallons	6.25
3" Meter	
First Tier – 1 to 218,000 gallons	$4.95
Second Tier – Over 218,000 gallons	6.25
4" Meter	
First Tier – 1 to 329,000 gallons	$4.95
Second Tier – Over 329,000 gallons	6.25
6" Meter	
First Tier – 1 to 695,000 gallons	$4.95
Second Tier – Over 695,000 gallons	6.25

SERVICE LINE & METER INSTALLATION CHARGES:
(Refundable pursuant to A.A.C. R14-2-405)

	Service Line	Meter	Total
5/8" x 3/4" Meter			
Same side of road	$ 370.00	$ 130.00	$ 500.00
Other side of road	670.00	130.00	800.00
3/4" Meter			
Same side of road	370.00	180.00	550.00
Other side of road	695.00	180.00	875.00

1" Meter			
Same side of road	400.00	225.00	625.00
Other side of road	775.00	225.00	1,000.00
1 1/2" Meter			
Same side of road	450.00	450.00	900.00
Other side of road	975.00	450.00	1,425.00
2" Meter Turbo			
Same side of road	550.00	900.00	1,450.00
Other side of road	1,450.00	900.00	2,350.00
2" Meter Compound			
Same side of road	550.00	1,575.00	2,125.00
Other side of road	1,825.00	1,575.00	3,400.00
3" Meter Turbo			
Same side of road	765.00	1,210.00	1,975.00
Other side of road	1,965.00	1,210.00	3,175.00
3" Meter Compound			
Same side of road	795.00	1,955.00	2,750.00
Other side of road	2,420.00	1,955.00	4,375.00
4" Meter Turbo			
Same side of road	1,055.00	2,120.00	3,175.00
Other side of road	2,980.00	2,120.00	5,100.00
4" Meter Compound			
Same side of road	1,095.00	2,930.00	4,025.00
Other side of road	3,495.00	2,930.00	6,425.00
6" Meter Turbo			
Same side of road	1,600.00	4,425.00	6,025.00
Other side of road	5,200.00	4,425.00	9,625.00
6" Meter Compound			
Same side of road	1,730.00	6,120.00	7,850.00
Other side of road	6,430.00	6,120.00	12,550.00

Charges differentiated by whether on same side of road as water main

SERVICE CHARGES:

Establishment	$40.00
Reconnection (Delinquent)	$50.00
Service Charge—After Hours at Customer Request	$35.00
Meter Test (If Correct)	$30.00
Deposit	*
Deposit Interest	*
Reestablishment (Within 12 Months)	**
NSF Check	$25.00
Deferred Payment (Per Month)	1.50%
Meter Re-Read (If Correct)	$15.00
Late Fee (Per Month)	***
Monthly Service Charge for Fire Sprinkler (All Meter Sizes)	****

* Per Commission rule A.A.C. R14-2-403(B)

** Months off system times the monthly minimum, per Commission rule A.A.C. R14-2-403(D)

*** 1.50% of the unpaid balance, after 15 days

**** 2.00% of the monthly minimum for a comparably sized meter connection, but no less

than $10.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

The typical monthly bill for a customer served by a 5/8" x 3/4" meter, with median or average usage, under the rates adopted herein (without surcharges), as compared to the current monthly bill for such usage, would be as follows:

Bill Impacts without Surcharges	Current Bill	New Bill	Dollar Increase	Percentage Increase
Average (5,192 gallons)	$36.23	$46.20	$9.97	27.52%
Median (4,112 gallons)	$33.53	$40.85	$7.32	21.84%

In addition to its recommendations as to the rates and charges that should be approved for Montezuma, Staff recommended:

- That Montezuma be permitted to collect from its customers a proportionate share of any privilege, sales, or use tax, per A.A.C. R14-2-409(D)(5);
- That Montezuma be directed to docket with the Commission a schedule of its approved rates and charges within 30 days after the date the Decision in this matter is issued;
- That Montezuma be directed to use the depreciation rates by individual NARUC account presented in Table B of Staff's Engineering Report;
- That Montezuma be directed, as a compliance item in this matter, to notify its customers of the authorized rates and charges approved in this proceeding, and their effective date, in a form acceptable to Staff, by means of an insert in its next regularly scheduled billing and to file copies with Docket Control within 10 days of the date notice is sent to customers;
- That Montezuma be directed to file a new rate case no later than June 30, 2017, using a test year ending no later than December 31, 2016;
- That Montezuma be required to file with Docket Control, as a compliance item in this matter and within 90 days after the effective date of the Decision in this matter, for the Commission's review and consideration, at least three BMPs in the form of tariffs that substantially conform to the templates created by Staff, which are available on the Commission's website; and

- That Montezuma be authorized in its next rate case to request recovery of the actual costs associated with the BMPs implemented.[84]

Montezuma did not object to any of Staff's recommendations listed above, but did express some concerns about the expense of implementing BMPs. (Tr. at 111-13.)

Although the Commission continues to believe that the implementation of BMPs is valuable and in the public interest, in light of both Montezuma's acceptable level of water loss and its need to concentrate its efforts on improving its bookkeeping and recordkeeping practices and making the system improvements for which long-term debt is approved herein, it is reasonable and appropriate in this matter not to impose upon Montezuma a requirement to adopt BMPs.

VI. The Complaint Docket

The remaining Allegations of Mr. Dougherty's Complaint are Allegations I, II, IV, VII, X, XI, XII, XV, and XVII.[85] (Ex. C-92.) Each of these is discussed below.

A. Allegation I

> The Company did [not] seek or obtain Commission approval to enter into a long-term, $32,000 debt in 2005 to acquire property for Well No. 4 in violation of ARS S40-301 and ARS S40-302. As a result, the Company has willfully encumbered or spent Ratepayer funds to pay for the undisclosed loan from 2005 through 2011 in violation of ARS S40-423 and ARS S40-424.[86]

To support Allegation I, Mr. Dougherty provided copies of Montezuma's Annual Reports filed in 2006 through 2011, as well as documentation of Montezuma's purchase of the Brunner property in November 2005, at a purchase price of $35,000, with a $3,000 down payment and outstanding "indebtedness in the principal sum of $32,000.00 evidenced by a Promissory Note or Notes"; and showing that the deed of trust for the property was fully released in August 2011. *(See* Ex. C-92; Ex. C-25; Ex. C-26; Ex. C-27; Ex. C-32; Ex. C-33; Ex. C-34; Ex. C-35; Ex. C-36; Ex. C-69; Ex. C-70; Ex. C-71.)

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[84] Ex. S-1 at 27-28.

[85] Montezuma and Staff also briefed Allegation VIII, but Mr. Dougherty did not include Allegation VIII as a remaining allegation of the Amended Formal Complaint in his direct testimony. (*See* Ex. C-92.)

[86] Amended Complaint filed in this matter on February 27, 2013, as corrected by Corrected Amended Formal Complaint filed in this matter on February 28, 2013. Official notice is taken of these documents, which shall be referred to collectively as the "Amended Complaint." The Amended Complaint incorporated by reference prior filed versions of Mr. Dougherty's Formal Complaint, initially filed on August 23, 2011, and subsequently amended. Official notice is taken of these documents as well.

As recounted previously in the section pertaining to Well No. 4, Ms. Olsen has acknowledged that the Brunner property was purchased by Montezuma in 2005, has asserted that she believed long-term debt was only incurred if an obligation was to last longer than five years, has asserted that no assets of Montezuma were encumbered as a result of the Brunner debt, and has asserted that she neglected to tell her accountant, Mr. Campbell, to include the Brunner debt on Montezuma's Annual Reports until approximately 2010.

Montezuma argues that Allegation I should be dismissed because Montezuma did not unlawfully encumber any utility asset when the Well No. 4 property was purchased, the purchase price for the property has been paid in full, and any alleged violation of Commission statutes related to incurring debt did not result in any harm to Montezuma or its ratepayers. (Montezuma Brief at 53.)

Staff argues initially that Mr. Dougherty lacks standing to pursue any of the allegations relating to obtaining approvals for financing and mischarging of rates by Montezuma because Mr. Dougherty is not a ratepayer and thus suffers no "injury in fact."[87] (Staff Brief at 26-27.) On the substance of Allegation I, Staff argues that: (1) Mr. Dougherty has failed to establish a violation because it is unclear that long-term debt was used to acquire the site for Well No. 4; (2) Staff does not rely upon the information provided in Annual Reports and expects them to be imprecise; (3) any alleged inaccuracy in the Annual Reports was not material; (4) the only entity harmed by not revealing the long-term debt would be Montezuma because it was unable to recover the costs of the unapproved debt through rates; (5) there is sufficient evidence to conclude that any inaccuracy in the

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[87] Staff acknowledged both that Mr. Dougherty had been granted intervention and that Staff did not oppose the intervention, but stated that access to the forum does not grant a party sufficient stake in a matter to confer standing to press a claim with regard to that matter. (Staff Brief at 26.) We note that A.R.S. § 40-246 does not require that a complainant be a ratepayer or suffer an injury in fact in order to pursue a complaint. In pertinent part, A.R.S. § 40-246 states the following:

> Complaint may be made by the commission of its own motion, or by any person . . . by . . . complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission . . . . The commission need not dismiss a complaint because of the absence of direct damage to the complainant.

The plain language of the statute is clear, and neither Staff nor Montezuma has provided a colorable argument or legal authority to dispute the plain meaning of the statute, which results in our determination that Mr. Dougherty was authorized to pursue his Complaint. Thus, although the parties raised the standing issue in reference to multiple allegations in Mr. Dougherty's Complaint, we will not address it further.

Annual Reports was unintentional; and (6) Mr. Dougherty as a non-ratepayer has not been asked to bear a share of recovering any amount of utility expense whether it was appropriately reported or not. (Staff Brief at 28-29.)

The evidence provided in this matter establishes that Montezuma entered into a long-term debt when the Well No. 4 site was purchased, that Montezuma had not requested or obtained prior approval of that long-term debt, and that Montezuma did not reveal that long-term debt in its Annual Reports filed in 2006 through 2011. It does not, however, establish that Montezuma has used any ratepayer funds to pay the unapproved debt. As Montezuma is wholly owned by Ms. Olsen, Montezuma's ratepayers have no stake in its assets, and Montezuma does not spend ratepayer funds. Rather, Montezuma used capital that would have been available for other utility purposes and may have precluded or at least diminished its ability to acquire capital at reasonable rates going forward. Montezuma's failure to obtain approval from the Commission before entering into the long-term debt was a violation of A.R.S. §§ 40-301 and 40-302. As A.R.S. §§ 40-423 and 40-424 speak to the consequences of violating the law, they do not create requirements that can be violated. Allegation I is substantiated to the extent that it alleged Montezuma's failure to obtain approval from the Commission before entering into the long-term debt was a violation of A.R.S. §§ 40-301 and 40-302.

B. Allegation II

> The Company did not disclose material financial information to Commission staff during a 2009 audit – a $32,000 long term debt – that was used to calculate a permanent rate increase and whether the company could qualify for a $165,000 WIFA loan. The staff audit formed the basis for Decision No. 71317 Docketed on Oct. 30, 2009 in W-04254A-[08]-0361, 0362. The failure to disclose the debt to staff when the Company submitted its 2007 annual report is a violation ARS S40-301, ARS S40-302, R14-2-411 D (1,2) and Commission Order 67583.[88]

To support Allegation II, Mr. Dougherty essentially provided the same evidence as for Allegation I, and additionally referred to Decision No. 71317 and the June 2009 Staff Report preceding it. There is no indication in Montezuma's application in the 2008-2009 rate case, the June 2009 Staff Report, or Decision No. 71317 that Montezuma had any pre-existing long-term debt.[89]

As discussed above, A.R.S. §§ 40-301 and 40-302 require a public service corporation to

[88] Amended Complaint.

[89] Official notice is taken of this Staff Report, which was filed in the 40-252 Docket on June 15, 2009. Official notice is also taken of Montezuma's application filed on July 16, 2008, in the same docket.

obtain approval from the Commission before entering into long-term debt. They do not speak to the information that a public service corporation must provide to Staff during a rate case audit.

Regarding accounting and recordkeeping requirements, however, A.A.C. R14-2-411(D)(1) and (2) provide:

> **D.** Accounts and records
>
> 1. Each utility shall keep general and auxiliary accounting records reflecting the cost of its properties, operating income and expense, assets and liabilities, and all other accounting and statistical data necessary to give complete and authentic information as to its properties and operations.
>
> 2. Each utility shall maintain its books and records in conformity with the NARUC Uniform Systems of Accounts for Class A, B, C and D Water Utilities.

Likewise, Decision No. 67583 required Montezuma to keep its books and records in compliance with the NARUC USOA. (Decision No. 67583 at 9, 11.)

Decision No. 71317 stated that Staff used Annual Reports for purposes of establishing plant balances for the years 2001 through 2005 because Montezuma had not obtained MEPOA's records for those years when the system was purchased. *(See* Decision No. 71317 at 7.) This absence of records alone suggests a failure by Montezuma (or Ms. Olsen) to comply with A.A.C. R14-2-411(D)(1) and (2) because no records have been maintained as to an extended period of time. Any assertion that Montezuma or Ms. Olsen lacked any control over that situation would be undermined by Ms. Olsen's having been involved in MEPOA's system operations for several years before Montezuma purchased the system and also by Ms. Olsen's father having been in control of MEPOA's system prior to that time.

Montezuma argues that Allegation II should be dismissed for the same reasons as stated in relation to Allegation I and, additionally, because Staff has not raised any issues relating to the 2009 audit, and Mr. Becker testified that he does not rely on utility Annual Reports for Class D utilities like Montezuma when evaluating rate cases. (Montezuma Brief at 54.) Montezuma further asserts that it did not violate A.A.C. R14-2-411(D)(1)-(2) or Decision No. 67583.

Mr. Becker testified at length that he and other Staff analysts do not rely greatly upon the information provided in Annual Reports. *(See, e.g.,* Tr. at 882.) Staff argues that Mr. Dougherty has failed to meet any of the elements to demonstrate a violation under Allegation II, stating that

Montezuma alone would bear the cost of not having revealed a long-term debt because its rates would not be set to recover any unrevealed debt; no entity other than Montezuma would be harmed as a result of Montezuma's not revealing the long-term debt in the rate case; failure to notify Staff of a debt is not a violation of A.R.S. §§ 40-301 and 40-302; and determining whether A.A.C. R14-2-411(D)(1)-(2) have been violated is subjective, and the state of Montezuma's records, although "less than perfect," does not rise to the level of a violation of that rule. (Staff Brief at 30-31.)

We have determined that Montezuma did not obtain Commission approval of the $32,000 long-term debt, and the evidence supports a conclusion that Montezuma did not reveal the long-term debt during its 2008-2009 rate case in its annual report for the test year or otherwise. Montezuma's failure to reveal the long-term debt during its rate case resulted in the Commission's not factoring Montezuma's pre-existing debt-related obligations into the Commission's determination that authorizing the $165,000 WIFA debt was consistent with sound financial practices and also into the Commission's determination of just and reasonable rates and charges. This had the potential to be detrimental to both Montezuma and its ratepayers.[90] While Montezuma's failure to notify Staff of the long-term debt during its rate case audit is not appropriately characterized as a violation of A.R.S. §§ 40-301 and 40-302, it is a violation of both A.A.C. R14-2-411(D)(1)-(2) and Decision No. 67583 for a public service corporation's records to be so inaccurate or incomplete as to make long-term debt undetectable during a rate case audit. Montezuma's rate application for the 2008-2009 rate case did not reveal the long-term debt. If Montezuma's books and records had been maintained in accordance with the NARUC USOA, and thus A.A.C. R14-2-411(D)(1) and (2) and Decision No. 67583, the existence of the long-term debt would have been readily apparent in Montezuma's books and records. The fact that it was not mentioned at all in the Staff Report that led to Decision No. 71317 indicates either that it was not recorded in Montezuma's books and records at all or that it was not recorded accurately and in compliance with the NARUC USOA, A.A.C. R14-2-411(D)(1) and (2), and Decision No. 67583. This conclusion is consistent with Ms. Olsen's testimony that she did not tell her accountant to include the Brunner debt on the company's annual reports until 2010, as the

[90] By using debt to finance the Well No. 4 site property, which was not used and useful, Montezuma diminished its ability to cover the costs associated with its approved financing and also diminished its ability to obtain future financing on the most favorable terms.

existence of the debt also would already have been apparent to her accountant from Montezuma's books and records, had it been properly accounted for in accordance with the NARUC USOA. We note also that a company's Annual Reports to the Commission are properly considered to be books and records under A.A.C. R14-2-411(D)(1) and (2). We find that Allegation II is substantiated to the extent that it alleges Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which is a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).

C. Allegation IV

> The Company's inclusion of Well No. 4 as part of its "Water Company Plant Description" in the 2007, 2008, 2009 and 2010 Annual Reports knowing it never had and still lacks final Yavapai County zoning approval to operate the Well violates Commission Decision Nos. 67583 and 71317 and R14-2-411 D (1,2).[91]

To support Allegation IV, Mr. Dougherty provided the Annual Reports for the years in question and, in addition, provided documentation of the proceedings related to and status of Montezuma's obtaining a permit from the County to use the Well No. 4 site for commercial purposes.

As discussed previously, the evidence presented in this matter shows that Montezuma does not have a County permit allowing it to use the Well No. 4 site (and thus allowing it to use Well No. 4) for commercial purposes. *(See, e.g.,* Ex. C-1.) In addition, the Annual Reports in evidence show that Well No. 4 was listed in plant. *(See* Ex. C-32; Ex. C-33; Ex. C-34; Ex. C-35; *see also* Ex. C-27.)

Montezuma argues that Allegation IV should be dismissed because Mr. Dougherty did not present any evidence on Allegation IV at hearing, Montezuma has executed an easement agreement with the property owner adjacent to Well No 4 and is in the process of seeking a County use permit, Well No. 4 is "excluded from the rate case," and including Well No. 4 on prior Annual Reports has no bearing on any issues in this case. (Montezuma Brief at 54-55.)

Staff argues that Allegation IV does not indicate a violation of A.A.C. R14-2-411(D) for the same reasons as stated for Allegations I and II; that Decision No. 67583 was not violated by Montezuma's including Well No. 4 on its Annual Reports, although the Well No. 4 site lacked regulatory approval for use from the County, because NARUC standards do not address "outside

[91] Formal Complaint.

regulatory treatment of plant assets"; and that no provision of Decision No. 71317 is implicated by Allegation IV.

Although NARUC standards do not address outside regulatory treatment of plant assets, they do require the exclusion from plant in service of plant that is not used and useful. Montezuma's Annual Reports in question include Well No. 4 in Montezuma's Water Company Plant Description but do not include Well No. 4 either as Account 121 Non-Utility Property or Account 105 Construction Work in Progress ("CWIP"), either of which would be acceptable under the NARUC USOA for plant that is not yet used and useful but nonetheless is owned by a utility.[92] (*See* Ex. C-32; Ex. C-33; Ex. C-34; Ex. C-35; *see also* Ex. C-27.) As a result, we must conclude that Montezuma included Well No. 4 in plant in service, which is not consistent with the NARUC USOA and thus is a violation of both Decision No. 67583 and A.A.C. R14-2-411(D)(1) and (2). Allegation IV is substantiated to the extent that Montezuma failed to maintain its Annual Reports, which are company records, in compliance with the NARUC USOA, which is a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).

D. Allegation VII

> The Company is in violation of state and federal safe water standards and is operating under an Arizona Department of Environmental Quality (ADEQ) Consent Order (since June 2010) requiring customers to make an appointment to obtain bottled water from the Company.
>
> . . . .
>
> The Company's failure to cure the deficiency is a violation of R-14-2-407 (A) and (C).[93]

Montezuma has acknowledged that it was in violation of safe drinking water standards and subject to an ADEQ Consent Order that required Montezuma to provide its customers bottled water. Montezuma is now in compliance with safe drinking water standards.

A.A.C. R14-2-407 (A) and (C) state:

> **A.** Utility responsibility. Each utility shall be responsible for providing potable water to the customer's point of delivery.
>
> **C.** Continuity of service. Each utility shall make reasonable efforts to supply a satisfactory and continuous level of service. However, no utility shall be responsible for any damage or claim of damage

[92] Nor is Well No. 4 included as Account 103 Property Held for Future Use, which would be a questionable categorization but still more accurate than including it within Account 101 Utility Plant in Service.

[93] Formal Complaint.

> attributable to any interruption or discontinuation of service resulting from:
> 1. Any cause against which the utility could not have reasonably foreseen or made provision for, i.e., force majeure
> 2. Intentional service interruptions to make repairs or perform routine maintenance
> 3. Curtailment.

Montezuma argues that Allegation VII should be dismissed because Mr. Dougherty, as a non-ratepayer, did not have standing[94] to assert that Montezuma failed to provide adequate service to its customers by providing water in violation of federal and state arsenic standards, and because Montezuma is now in compliance with the arsenic MCL and providing water in compliance with safe drinking water standards. (Montezuma Brief at 55.) Montezuma further argued that Mr. Dougherty "has unclean hands" on this issue because of actions he took to prevent construction and operation of the arsenic treatment system. (*Id.*)

Staff argues that Mr. Dougherty lacks standing[95] to make this allegation because he is not a ratepayer and, further, states that Montezuma is not in violation of state and federal arsenic standards now and, effectively, was not out of compliance with arsenic standards previously because ADEQ had entered into consent orders with Montezuma that extended its deadline to come into compliance. (Staff Brief at 32.)

The evidence is uncontroverted that Montezuma, for a period of several years, did not provide its customers, at point of delivery, potable water that met federal and state safe drinking water standards. The evidence is equally uncontroverted that Montezuma now does provide its customers such water, because it has installed and is operating an arsenic treatment system. Allegation VII has been rendered moot, and it is dismissed with prejudice.

E. Allegation X

> The Company provided incomplete and misleading statements to Commission investigators in January 2010 concerning its Yavapai County zoning issues related to Well No. 4. The Company's incomplete and misleading statements to ACC investigators is a violation of R 14-2-411.[96]

To support Allegation X, Mr. Dougherty referred to an attachment to his original Formal Complaint. That attachment, labeled as exhibit 18 to the Formal Complaint, was not presented at

[94] See note 87.
[95] See note 87.
[96] Amended Complaint.

hearing, and no testimony was elicited specifically with regard to it. The document itself appears to be an undated partial copy of a Commission Utility Complaint Form.

In contrast, Montezuma provided an exhibit showing that Yavapai County had approved a site plan allowing Montezuma to drill Well No. 4 as a replacement well for an existing domestic well. (*See* Ex. A-28.) Ms. Olsen testified that she believed Yavapai County had approved the drilling of the well, based upon a site plan. (Tr. at 122-24, 432.)

Montezuma argues that Allegation X should be dismissed for a lack of evidence, because Mr. Dougherty did not present any evidence on this Allegation at hearing. (Montezuma Brief at 56.) Montezuma further argues that A.A.C. R14-2-411 addresses administrative and hearing requirements related to customer service complaints and other administrative issues, but Mr. Dougherty is not a customer. (*Id.*)

Staff argues that Mr. Dougherty lacks standing[97] regarding Allegation X; that Staff as the party allegedly deceived is not seeking any relief related to the alleged misleading statements; and that there was a bona fide legal uncertainty regarding whether Yavapai County approval was necessary, which prevents a conclusion that Montezuma deliberately deceived Staff. (Staff Brief at 33.) Staff argues that Mr. Dougherty has failed to make the necessary showing to demonstrate a violation of A.A.C. R14-2-411 as to Allegation X. (*Id.*)

Because the evidentiary record does not establish what statements were made to Commission investigators in January 2010 related to this Allegation, Mr. Dougherty has failed to meet the burden of proof as to Allegation X. Allegation X is dismissed with prejudice.

F. Allegation XI

The Company illegally collected an arsenic surcharge from its customers in December 2009 in violation of Commission Decision No. 71317.[98]

Montezuma has admitted that this collection was made right after the current rates were approved and, further, that the arsenic surcharges collected in 2009 were never refunded to customers and were ultimately used for Montezuma's operations. (Ex. A-2 at 31; Tr. at 438-39.) Montezuma has acknowledged also that it lacked authority to collect the arsenic surcharge at that time. (*See* Tr. at

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[97] See note 87.

[98] Formal Complaint.

438-39.)

Montezuma argues that Allegation XI should be dismissed because Montezuma acknowledges that it improperly invoiced customers for arsenic surcharges, and Mr. Dougherty did not present any evidence at hearing on this issue or suggest or request any relief related thereto. (Montezuma Brief at 57.) Montezuma further argues that Mr. Dougherty does not have any standing[99] to seek relief on this issue because he is not a customer. (*Id.*)

Staff argues that Allegation XI should be dismissed because Mr. Dougherty, as a non-ratepayer, lacks standing[100] to pursue the issue; no consumer complained about the mischarge; and Mr. Dougherty has not supplied any evidence in the record to substantiate that a ratepayer actually paid the improper charge. (Staff Brief at 33-34.) Staff further argues that if the Commission concludes an overcharge occurred, a refund to the customers overcharged could be an appropriate remedy. (*Id.*)

Mr. Dougherty did not present as evidence at hearing a copy of the customer bills showing the $10.11 arsenic surcharge that appeared on an unnamed customer's December 2009 bill and not on the customer's January 2010 bill, although he had included a copy of the bills in his Formal Complaint. (*See* Formal Complaint at ex. 19.) However, Ms. Olsen testified that the surcharge was not just invoiced but was collected and that the money collected through the surcharge was originally set aside and then later spent on operations. (*See* Tr. at 438-39.) Ms. Olsen testified that no one told her to refund the surcharge funds collected in 2009. (*Id.*)

In light of Ms. Olsen's testimony, coupled with the customer bills that were included in Mr. Dougherty's Formal Complaint,[101] the evidence establishes that an arsenic surcharge of $10.11 per account was invoiced in and collected from the December 2009 billing, which was unlawful and in violation of Decision No. 71317, and that the surcharge funds so collected were never refunded to Montezuma's customers. Allegation XI is substantiated.

G. Allegation XII

For the second time, the Company illegally collected an arsenic surcharge from its customers when it billed customers in April 2011 in violation of

[99] See note 87.
[100] See note 87.
[101] Official notice has been taken of the Formal Complaint.

Commission Decision No. 71317.[102]

To support Allegation XII, Mr. Dougherty provided a copy of the Utility Complaint Form, including Montezuma's responses and Staff's investigative notes, which Staff filed in the 40-252 Docket in July 2011. (Ex. C-39.) Ms. Olsen acknowledged the authenticity of the Montezuma responses in her testimony at hearing and had previously acknowledged in her prefiled testimony that the arsenic surcharge had been collected, without authority, from customers in Montezuma's April 2011 billing. (Tr. at 285-90; Ex. A-2 at 31.)

Montezuma argues that Mr. Dougherty did not present any evidence on this issue at hearing and did not suggest or request any relief and, further, that he lacks standing[103] to seek any relief because he is not a customer of Montezuma. (Montezuma Brief at 57.) Montezuma further argues that Ms. Olsen explained the surcharges in her testimony and that the underlying record does not support any action against Montezuma as to this Allegation.

Staff argues that Mr. Dougherty lacks standing[104] to press this claim because he is not a ratepayer and was not charged the alleged mischarge. (Staff Brief at 34.) Staff further argues that the mischarge has already been addressed through the informal complaint received and the refund provided and, thus, that Mr. Dougherty has failed to establish any merit to Allegation XII. (*Id.*)

The evidence establishes that an arsenic surcharge of $15.00 per account was invoiced in and collected from the April 2011 billing, unlawfully and in violation of Decision No. 71317, and that the surcharge funds so collected were refunded to Montezuma's customers. Allegation XII is substantiated.

H. Allegation XV

> The Company failed to immediately report to the Commission that Company's records had been stolen during a series of burglaries that allegedly began in October 2009 and continued into 2010. Despite the serious impact to the Company from records being stolen, the Company failed to notify the police and make formal reports of the thefts.
>
> . . . .
>
> The Company's failure to timely disclose that Company's records have been stolen and the Company's computer compromised is a violation of Commission Decision 67583 and raises serious questions over the accuracy of the Company's financial statements and its Annual Reports

[102] Formal Complaint.
[103] See note 87.
[104] See note 87.

filed for 2009 and 2010.[105]

To support this allegation, Mr. Dougherty referred in his prefiled testimony to statements made by Montezuma at a September 12, 2011, procedural conference in the emergency rate case docket. (Ex. C-92 at 11-12.) Mr. Dougherty did not provide any other exhibits related to this allegation. Ms. Olsen has acknowledged that she believes Montezuma records were stolen from its offices and that no police report was filed.[106] *(See* A-2 at 32; Tr. at 419-20.) The specific records alleged to have been stolen have not been identified.

Montezuma argues that Allegation XV is frivolous and should be dismissed because Mr. Dougherty did not present any evidence on this issue at hearing, because Montezuma does not have an obligation to report burglaries to the Commission or to the police, and because Montezuma's failure to report such incidents to either is not a violation of any requirement and thus not an actionable complaint item.

Staff argues that a utility has no duty to report thefts to the Commission, that no such duty is created by the requirement to comply with NARUC standards, and that Mr. Dougherty has not provided evidence sufficient to show a violation of any legal requirement.

Mr. Dougherty did not provide any legal authority to demonstrate a requirement for Montezuma to make such a report to the Commission or to police.

Montezuma and Staff are correct that Montezuma did not have a legal obligation to report to the Commission its belief that its records had been stolen. Nor are we aware of any legal obligation for Montezuma to report such theft to the police.

The alleged theft of its records does, however, call into question Montezuma's compliance with A.A.C. R14-2-411(D)(1)'s requirement for a utility to "keep general and auxiliary accounting records reflecting the cost of its properties, operating income and expense, assets and liabilities, and all other accounting and statistical data necessary to give complete and authentic information as to its properties and operations." While Montezuma cannot fairly be held responsible for the criminal acts

[105] Motion to Modify Formal Complaint, September 13, 2011.

[106] Ms. Olsen further testified that Montezuma's offices were also broken into, and that the company's back-up hard drive was stolen, after a portion of the company office was moved to her Flagstaff home. (Tr. at 419-20.) Ms. Olsen testified that a police report was filed after the incident in Flagstaff. (*Id.*) Mr. Dougherty provided a copy of the report from the Flagstaff Police Department, dated June 21, 2012, because he had been listed as an investigative lead. (*See* Ex. C-103; Tr. at 678-79.)

of third parties, Montezuma does have a duty to maintain complete and authentic records, and that necessitates maintaining back-up records to ensure that complete and authentic information is available even in the event of an unexpected event, such as computer failure, damage from water or fire, or theft. Thus, while we do not substantiate Allegation XV under the circumstances herein, we direct Montezuma that it needs to take reasonable measures to ensure the security of its original records and to maintain back-up records in the event its original records become unavailable. Because there is insufficient evidence to establish that the theft of its records resulted in Montezuma's failure to maintain its records in accordance with the NARUC USOA and thus a violation of Decision No. 67583, Allegation XV is dismissed with prejudice.

I. Allegation XVII

A. Montezuma knowingly and willfully violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362 by failing to docket a March 22, 2012 Capital Lease agreement between Montezuma and Nile River Leasing, LLC for an Arsenic Treatment Building. Instead, the Company docketed a fraudulent March 16, 2012 lease agreement between Mrs. Patricia Olsen, personally, and Nile River Leasing for the building. This action was undertaken to circumvent Commission approval of Capital Leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

B. Montezuma knowingly and willfully violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362 by failing to docket a Capital Lease agreement with Financial Pacific Leasing, LLC for an Arsenic Treatment Facility signed on or about April 3, 2012. Instead, the Company docketed a fraudulent March 16, 2012 lease agreement between Mrs. Patricia Olsen, personally, and Nile River Leasing, for the Arsenic treatment equipment. This action was taken to circumvent Commission approval of Capital Leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

C. Ms. Patricia Olsen knowingly and willfully docketed a fraudulent lease agreement between Montezuma and Financial Pacific Leasing for an Arsenic Treatment Facility dated on or about May 2, 2012 in an October 25, 2012 filing docketed in W-04254A-12-0204 et seq. when, in fact, the Company had entered into an effective lease agreement with Financial Pacific Leasing on or about April 3, 2012. This action was taken to circumvent Commission approval of Capital leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

D. The Company has willfully spent or encumbered Ratepayer funds in connection with the execution of the unauthorized Capital Leases for the Arsenic Treatment building and Arsenic treatment equipment entered into by the Company in violation of ARS S40-423, ARS S40-424 and ARS S40-425.

E. Contrary to Montezuma Counsel's April 27, 2012 Legal Brief, the Company, rather than Ms. Olsen, entered into a purchase agreement

with Kevlor Design Group, LLC for the Arsenic Treatment Equipment in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.[107]

The evidence as to the filing of invalid lease documents has been described at length above, and it is unnecessary to recount that information here. Although the evidence establishes what happened, in terms of valid documents not having been filed and invalid documents having been filed by Montezuma in response to Procedural Orders, and establishes that the position taken in the April 27, 2012, Legal Brief was not based in fact, Ms. Olsen has not admitted either to having created the invalid documents herself or having known that they were invalid at the time that they were filed with the Commission. Nor has Ms. Olsen admitted to acting pursuant to a scheme to circumvent Commission approval of the valid lease agreements. Additionally, as noted previously, Montezuma's ratepayers do not have an ownership interest in the funds held by Montezuma, so their funds cannot be spent by Montezuma. As to the brief, Ms. Olsen has testified that she did not inform her attorney when she signed the leases for Montezuma, and she provided unclear testimony regarding whether she reviewed the brief before it was filed with the Commission. (Ex. A-2 at 12; Tr. at 349-55.)

Montezuma argues that Allegation XVII does not warrant any actions or sanctions against Montezuma; that Montezuma acknowledges that it violated the Procedural Orders; that Montezuma did not intentionally violate those Procedural Orders; that Montezuma always intended to have the Commission review and approve the Nile River and Financial Pacific leases; and that Staff was aware of the leases and supported Montezuma's decision to install the arsenic treatment system before the debt created by the leases was approved. (Montezuma Brief at 58.) Montezuma further argues that Staff does not have any problem with Montezuma's having filed the wrong leases with the Commission. (*Id.* at 58-59.) Montezuma emphasizes that the actions taken were in the best interests of its customers. (*Id.* at 59.) Montezuma argues that Mr. Dougherty's suggestion that Montezuma committed fraud is "silly and based on a misunderstanding of fraud under Arizona law" and contrary to the underlying facts. (*Id.* at 59-60.) Montezuma argues that taking any adverse action against it would not benefit the Commission or customers and would be counterproductive and against the public interest. (*Id.* at 59.)

[107] Amended Complaint.

Staff argues that although the Commission has the authority to grant retroactive approval of long-term debt, as discussed previously, Staff agrees that Montezuma could be viewed as having violated A.R.S. §§ 40-301 and 40-302, although Staff believes that it is premature to pursue a violation of those statutes when a request for retroactive approval of the debt is pending. (Staff Brief at 35.) Staff also argues that it is not possible to violate A.R.S. §§ 40-424 and 40-425 because they do not establish requirements with which a utility must comply. (*Id.*)

The evidence establishes that Montezuma entered into long-term debt, in the form of the capital leases with Nile River and Financial Pacific, in March 2012, without first having obtained approval from the Commission. This was a violation of A.R.S. §§ 40-301 and 40-302.

The evidence also establishes that Montezuma filed false or misleading information with the Commission on April 13, 2012, April 27, 2012, and October 25, 2012, when it filed invalid lease documents and made false or misleading statements presented as fact. In doing so, Montezuma violated the Procedural Order issued on April 9, 2012.[108]

Ms. Olsen's testimony as to her beliefs and knowledge concerning the validity of the personal one-page leases signed by her and by "Robin Richards" are not credible, and the evidence indicating alteration of some of the Montezuma leases filed with the Commission, noted previously, is troubling. It is especially problematic that partial Montezuma leases were filed with the Commission, particularly because the omission of Rider No. 2 obscured that the Nile River lease was a capital lease. Ms. Olsen is the person who had control of the documents and who is ultimately responsible for the documents' having been signed for "Robin Richards," for altered documents' being filed with the Commission, and for incomplete documents' being filed with the Commission. Ms. Olsen has testified to being confused about the leases, being mystified about the "Robin Richards" signatures, and not being able to remember myriad events due to her stress and sleep deprivation during the times in question. While it may be true that Ms. Olsen was confused, stressed, and sleep deprived, she is ultimately responsible for Montezuma's actions, and Montezuma provided false and misleading information to the Commission under circumstances that indicate it was done willfully

[108] It is unclear on what date Montezuma actually obtained possession of the lease documents to be executed by Montezuma, but it had clearly happened by March 22, 2012, and thus before April 9, 2012.

and with knowledge of the falsity/misleading nature of the information, specifically to avoid the requirement for Commission approval of the long-term debt represented by the leases.[109]

As stated previously, A.R.S. §§ 40-423 and 40-424 speak to the consequences of violating the law and do not create requirements that can be violated by a public service corporation.

Allegation XVII is substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012. The remaining provisions of the Allegation are dismissed with prejudice.

J. Remedies

Mr. Dougherty asserts that because Montezuma does not operate legally and in the public interest, Montezuma, Ms. Olsen, and Montezuma's counsel should be found in contempt of the Commission for withholding the capital leases and submitting invalid leases in their place. (Ex. C-92 at 18.) Mr. Dougherty further asserts that Montezuma's CC&N should be revoked, or rescinded under Decision No. 67583. (*Id.*) In addition, Mr. Dougherty asserts that forgery has been established and that the Commission should refer the matter to the Attorney General's office or the County Attorney's office for further investigation. (Ex. C-92 at 20.)

Montezuma argues that, as a matter of law, the Commission cannot lawfully rescind or revoke Montezuma's CC&N because Montezuma is providing adequate water service to its customers at a reasonable rate. (Montezuma Brief at 61 (citing *James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983)).) Montezuma argues that not only is Montezuma providing adequate water service, but Ms. Olsen has dramatically improved water service to Montezuma's customers since she acquired the system. (*Id.*)

Montezuma further argues that the Commission cannot transfer Montezuma's CC&N to AWC, which is not interested in taking over the system unless Montezuma desires the sale or transfer, which it does not. (*Id.* at 62.) Montezuma further argues that even if AWC were appointed as an interim operator, or the Commission "unlawfully" awarded Montezuma's service area to AWC, Ms. Olsen would still own all of the utility facilities, and there would be a regulatory taking for which

[109] Knowingly making false statements or representations to the Commission in relation to a financing can be a felony under A.R.S. § 40-303(C). Any criminal prosecution would occur in a venue other than the Commission.

Ms. Olsen would need to receive just compensation. (*Id.*) Montezuma also argued that the Commission cannot lawfully transfer a CC&N from one entity to another.[110] (*Id.* at 63.)

Regarding holding Montezuma or Ms. Olsen in contempt under A.R.S. § 40-424 or penalizing Montezuma or Ms. Olsen under A.R.S. § 40-425, Montezuma argues that Ms. Olsen cannot be penalized because the Commission lacks jurisdiction over her personally and, additionally, that Montezuma should not be fined or otherwise penalized because the only party proposing such action is Mr. Dougherty, Montezuma did not have any ulterior or improper motives related to filing and approvals of the lease agreements and violations of Procedural Orders, and imposing a financial penalty upon a small and financially weak water utility would be counterproductive. (*Id.* at 71-72.)

Staff recommended that the Commission find that Mr. Dougherty had failed to meet his burden in establishing the elements of any of his allegations. (Staff Brief at 36.) Staff argued that Mr. Dougherty did not allege in his complaint that Montezuma had violated Decision No. 67583 by encumbering assets of the utility without prior Commission approval and, thus, that Montezuma was not adequately noticed that its CC&N rights might be rescinded on that basis. (*Id.*) Staff further argued that rescinding Montezuma's CC&N would be directly at odds with the *James P. Paul* case because Montezuma is providing service superior to that provided by MEPOA and, additionally, that MEPOA is not a party to this proceeding and may not be willing to take the CC&N back after a rescission. (*Id.*) Staff also argued that AWC is not a party to this matter and cannot be forced to have the CC&N, in which it has not expressed an interest. (*Id.* at 13-14.)

Regarding the imposition of fines, Staff argued that the Commission has several sources of fining authority, including Article XV, §§ 16 and 19 of the Arizona Constitution as well as A.R.S. §§ 40-424 and 40-425. (*Id.* at 15-16.) Staff stated that if the Commission were to determine that the facts in this matter demonstrate the violation of Commission rules, statutes, or decisions, it has the authority to issue fines. (*Id.* at 16.) Staff argued that there is also a "colorable argument" that the Commission could impose a fine based upon violation of a Procedural Order, using the Commission's contempt authority under A.R.S. § 40-424. (*Id.*) Staff argued that Montezuma is "not

[110] Montezuma cited *Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Comm'n*, 177 Ariz. 49, 56, 864 P.2d 1081, 1088 (App. 1993).

a suitable candidate for enforcement," however, because pursuing enforcement "would send a message that Staff assists struggling utilities only to assail them when they are on the precipice of achieving compliance." (*Id.* at 17.) Staff also expressed the following concern:

> [E]nforcement actions do not always accelerate the process of achieving ultimate compliance owing to the tendency of the subject utility to devote its resources to defending the enforcement action rather than curing the issue that prompted the noncompliance. This concern is particularly acute in the case of small class D and E water utilities and is illustrated here by the extraordinary degree of legal expenses incurred by the Company in the present case in proportion to the overall revenue requirement.[111]

K. Conclusion

We have concluded that, at least in part, Allegation I, Allegation II, Allegation IV, Allegation XI, Allegation XII, and Allegation XVII are substantiated by the evidence. The remaining portions of these Allegations, as described above, and the remaining Allegations are being dismissed with prejudice.

As to Allegation XI, because Montezuma unlawfully collected $10.11 in the form of an arsenic surcharge from each of its customers, and Montezuma has not refunded those unlawfully collected funds from its customers, it is reasonable and appropriate to require Montezuma, in the first billing after the effective date of this Decision, to provide each of its customer accounts a credit of $10.11, which shall be listed separately on each customer bill as a "2009 unlawful arsenic surcharge refund." While we are cognizant that Montezuma's customer base may have changed somewhat since the arsenic surcharge amount was unlawfully collected in 2009, we find that this is a just and reasonable remedy as to this Allegation. Montezuma should have made the refunds as soon as the billing error was detected, and we trust that it will do so promptly should any type of billing error be detected in the future. We will require Montezuma to make a filing, within 60 days after the effective date of this Decision, as a compliance item in this docket, demonstrating that its customers have received the credit in their bills as required herein.

Mr. Dougherty has spent many hours and has expended much in the form of energy and personal resources to make the Commission aware of these allegations. There is evidence in the

[111] Staff Brief at 17.

record herein that Mr. Dougherty's involvement in this matter with Montezuma has been at some personal cost, economically and otherwise, as Mr. Dougherty has been subjected to criticism, public allegations of ethnic prejudice,[112] and even criminal investigation.[113] The dispute between Mr. Dougherty and Montezuma has been vitriolic and personal, and we do not find credible Ms. Olsen's assertions that Mr. Dougherty has been motivated by ethnic prejudice in his investigation of Montezuma's operations. As stated previously, this dispute may have been avoided altogether had Montezuma complied with the law and obtained a use permit for Well No. 4 before it began modifying the well site for commercial use. Likewise, if Montezuma had never filed invalid, incomplete, or false/misleading documents with the Commission, this matter would have been resolved long ago.

The Commission depends upon accurate information being filed by the companies that it regulates. The facts of this case indicate that the Company and its owner knowingly filed what appear to be misleading information and documents with the Commission, apparently in an effort to avoid Commission jurisdiction. The Commission cannot condone such action under any circumstances. A.R.S. § 40-421(B) states that "upon request of the commission, the attorney general, or the county attorney of the proper county, shall aid in any investigation, hearing or trial conducted under the provisions of this chapter and shall institute and prosecute actions or proceedings for enforcement of the provisions of the constitution and statutes of this state affecting public service corporations and for punishment of all violations thereof." Because of the very serious nature of the Company's and owner's actions reflected in the record, we shall direct the Legal Division to consult with the Attorney General's Office regarding a referral for possible further action against Montezuma and its owner under Arizona law.

The Commission has the legal authority to impose fines upon Montezuma and its owner Ms. Olsen, but also has the discretion not to impose fines upon the Company and Ms. Olsen, if the

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[112] Ms. Olsen has publicly accused Mr. Dougherty of making a derogatory remark to her that suggested ethnic prejudice and testified that she believes he is motivated by ethnic prejudice in this matter. (*See* Tr. at 433.) Mr. Dougherty denies that he ever made such a remark. (Tr. at 665.)

[113] Ms. Olsen accused Mr. Dougherty of hitting her with his motorcycle on May 16, 2012, but the investigating officer from the Yavapai County Sheriff's Office concluded that the physical evidence did not support her account of the incident and that "the incident did not occur as Patricia said it did." (Ex. C-50.)

imposition of fines is not believed to be in the public interest. In determining whether to assess fines in this case, we must balance our very strong desire to ensure compliance with our Decisions, related statutes, and our rules and regulations with the adverse impact that the imposition of fines could have on a small water company which is already financially stressed.

While we are cognizant of the tension between these two considerations, our action today must give heightened consideration to the need to ensure compliance with our Orders, rules, regulations, and statutes. We cannot send a message to companies, including Montezuma, that they are free to ignore our Decisions, related statutes, rules, and regulations with impunity and suffer no adverse consequences for their actions. Other factors which persuade us that this consideration deserves an elevated position in this balancing are the facts that this Order finds repeated violations of statutes the Commission is charged with enforcing, as well as violations of its Orders. Moreover, this Order finds that the Company and Ms. Olsen actively attempted to conceal the need for Commission approval by submitting documents designed to make it appear that the transactions did not need Commission approval. All of these factors lead us to believe that significant fines are appropriate in this case.

The Order finds the following: (1) Allegation I of Mr. Dougherty's complaint was substantiated to the extent it alleged Montezuma's failure to obtain approval from the Commission before entering into $32,000 of long-term debt in 2005 was a violation of A.R.S. §§ 40-301 and 40-302; (2) Allegation II of Mr. Dougherty's complaint was substantiated to the extent that it alleged Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2); (3) Allegation IV was substantiated to the extent that Montezuma failed to maintain its Annual Reports in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2); (4) Allegation XI was substantiated by the evidence which establishes that an arsenic surcharge of $10.11 per account was invoiced in and collected from the December 2009 billing, which was unlawful and in violation of Decision No. 71317, and that the surcharge funds so collected were never refunded to Montezuma's customers; (5) Allegation XII was substantiated by the evidence establishing that Montezuma invoiced and collected an arsenic surcharge of $15.00 per

account in its April 2011 billing, which was unlawful and in violation of Decision No. 71317; and (6) Allegation XVII was substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012, resulting from Montezuma's entering into long-term debt in the form of capital leases with Nile River and Financial Pacific in March 2012 without prior Commission approval, and then filing misleading information and documents with the Commission.

Thus, altogether, this Order finds at least twelve (12) separate violations of Commission Orders, statutes, rules, and regulations. The Commission's fining authority emanates directly from the Arizona Constitution, Article 15, Sections 16 and 19. Moreover, the Commission also has statutory fining authority which is set forth in Arizona Revised Statutes, Title 40, Chapter 2, Article 9. A.R.S. § 40-424(A) provides that "[i]f any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars." A.R.S. § 40-424(B) provides that this remedy is cumulative in nature. A.R.S. § 40-425 provides that "[a]ny public service corporation which violates or fails to comply with any provision of the constitution or of this chapter, or which fails or neglects to obey or comply with any order, rule or requirement of the commission, the penalty for which is not otherwise provided, is subject to a penalty of not less than one hundred nor more than five thousand dollars for each offense."

In addition, A.R.S. § 40-428 provides that "[a]ll penalties accruing shall be cumulative to each other, and an action for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer or employee thereof, or any other person, or be a bar to the exercise by the commission of its power to punish for contempt."

Considering the number of violations in this case, the repeated nature of those violations, and the Company's and Ms. Olsen's attempts to conceal the violations through repeated filings of erroneous documents, against the current financial status of the Company and our desire not to harm the customers of the Company, we believe that a fine of $1,000 per violation is appropriate. Under

A.R.S. § 40-425, twelve violations at $1,000 would be $12,000. Moreover, the Commission may impose contempt fines in addition to any fines imposed under A.R.S. § 40-425, since its fining authority under A.R.S. § 40-424 is cumulative. Thus, we will impose another $250 fine under A.R.S. § 40-424 upon the Company for each of the twelve violations of Commission Orders, related statutes, and rules found in the Order and a $250 fine upon Ms. Olsen for each of her separate violations of the Commission Order, related statutes, and regulations, for a total fine under the contempt statute of $6,000. Altogether, the fines imposed in this case total $18,000.

However, we shall suspend payment of the fines by Montezuma and Ms. Olsen at this time. If Staff finds in its review of the Company's compliance reports that the Company and Ms. Olsen are timely complying with all the requirements of this Order and with all statutes, rules, and regulations under the Commission's jurisdiction, Staff may recommend waiver of the fines or portions thereof after the various compliance periods. If Staff finds that the Company and Ms. Olsen are not timely complying with the requirements of this Order, or of statutes, rules, or regulations under the Commission's jurisdiction, Staff shall make a recommendation to the Commission as to whether payment of the fine, or a portion thereof, is appropriate.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Montezuma is an Arizona limited liability company, wholly owned by Patricia Olsen, and is a Class D water utility providing service to approximately 205 mostly residential metered connections in a service area approximately 3/8 of a square mile in size located in the vicinity of Rimrock, Arizona, in Yavapai County.

2. Until 2005, Montezuma's water system was owned by the non-profit MEPOA, of which Ms. Olsen's father was President.

3. In Decision No. 67583, the Commission approved the sale of MEPOA's utility assets and the transfer of its CC&N to Montezuma, although Staff had recommended denial and expressed the belief that MEPOA's utility assets should instead be acquired by AWC, which operates a nearby

system. AWC did not take any action to purchase the system or to prevent its sale to Montezuma. The Commission required Montezuma to procure a performance or surety bond in the amount of $30,000, to maintain the bond, and to file copies of the bond annually with the Commission on the effective date of the Decision and until further order of the Commission.

4. Montezuma's active system consists of Well No. 1, with a pump yield of 55 GPM; a centralized 150 GPM arsenic treatment system; three storage tanks with a combined capacity of 25,200 gallons; two booster systems; and a distribution system that was serving 210 service connections at the end of 2011. Staff has determined that Montezuma does not have sufficient storage capacity to serve its present customer base and accommodate reasonable system growth and fire protection.

5. Montezuma's water supply has excessive arsenic levels, with its active Well No. 1 producing untreated water with an arsenic level of 35 ppb and its inactive Well No. 2 producing untreated water with an arsenic level of 43 ppb. Even the water produced by Montezuma's unused Well No. 4, with an arsenic concentration of 16 ppb, exceeds the current arsenic MCL.

6. On October 30, 2009, the Commission issued Decision No. 71317, authorizing Montezuma's current rates and charges; authorizing Montezuma to obtain a $165,000 WIFA loan for the purpose of building an arsenic treatment facility and a water line between Montezuma's Well No. 1 and a new Well No. 4; and authorizing Montezuma to submit an application to implement an ARSM to be used to pay for the WIFA loan. The Decision required Montezuma to file an AOC for Well No. 4 by December 31, 2009; to file an AOC for the arsenic treatment project by April 30, 2010; to file a permanent rate application using a 2011 test year by May 31, 2012; and to file the executed WIFA loan documents and the ARSM application within 60 days after executing the WIFA loan documents.

7. John E. Dougherty, III, owns a home within Montezuma's service area, but is not a Montezuma customer. Mr. Dougherty's property is served by a private well. Mr. Dougherty became involved with Montezuma after observing in October 2009 that Well No. 4 and associated structures had been installed on a residential property located across from his home in Rimrock. Mr. Dougherty first became involved with Montezuma's proceedings before the Commission in February 2010 in

relation to a Recommended Order that would have granted Montezuma an extension of a deadline in Decision No. 71317.

8. The procedural history in this matter is unusually complex and extensive and is as described in the Discussion portion of this Decision.

9. This matter involves the following dockets, all of which were consolidated for all purposes going forward in a Procedural Order issued on February 26, 2013:

a. The 40-252 Docket, opened at Montezuma's request for the purpose of determining whether to modify Decision No. 71317 concerning financing approval and related provisions;

b. The Complaint Docket, in which Mr. Dougherty has filed a formal complaint *against Montezuma under* A.R.S. § 40-246;

c. The Rask Docket, concerning a loan agreement in which Montezuma promised to pay Rask Construction the sum of $68,592, with interest from May 1, 2012, at a rate of 6 percent per year, for installation of a water line from Well No. 4 to Well No. 1;

d. The Olsen Docket, concerning a loan agreement in which Montezuma promised to pay Ms. Olsen the sum of $21,377, with interest from August 30, 2011, at a rate of 6 percent per year, for the purchase of the Well No. 4 site and a company vehicle;

e. The Arias Docket, concerning a loan agreement in which Montezuma promised to pay Sergei Arias, Ms. Olsen's son, the sum of $15,000, with interest from July 1, 2011, at a rate of 6 percent per year, for the purchase of an 8,000-gallon hydro-pneumatic tank; and

f. The Rate Docket, in which Montezuma has requested a permanent rate increase as well as approval of three separate financings for which applications were filed in April 2013:

i. A 20-year WIFA Loan, with a principal amount of $108,000, to be used to purchase and install four 20,000-gallon storage tanks;

ii. A 3-year lease with Nile River, with a principal amount of $8,000, through which Montezuma obtained the building housing its arsenic treatment system; and

iii. A 5-year lease with Financial Pacific, with a principal amount of $38,000, through which Montezuma obtained its arsenic treatment system.

10. Mr. Dougherty has been granted intervention as to the dockets in this matter other than the Complaint Docket.

11. The Nile River lease and Financial Pacific lease, both of which are capital leases, were entered into by Montezuma in March 2012, without prior Commission review and approval of the associated long-term debt.

12. Montezuma is requesting retroactive approval for the long-term debt associated with the Nile River lease and Financial Pacific lease.

13. Montezuma has installed a 150 GPM arsenic treatment system to treat the water from Well No. 1 and received an AOC for the arsenic treatment system on November 21, 2012. The arsenic treatment system has been operating as part of Montezuma's water system since November 29, 2012, and has been effective in remediating the arsenic levels in Montezuma's water supply.

14. On December 19, 2013, ADEQ issued a Drinking Water Compliance Status Report stating that Montezuma was in full compliance with safe drinking water requirements after having submitted a full year of test results showing that its system water is in compliance with the arsenic MCL.

15. A significant portion (63 percent) of the 150 GPM arsenic treatment system represents excess capacity.

16. Montezuma does not have legal authority to operate Well No. 4 for its system, and Well No. 4 is not in use.

17. Since October 2009, Montezuma, Ms. Olsen, and Mr. Dougherty have been involved in an extended disagreement concerning Well No. 4 and Montezuma's operations and business practices. The disagreement has been acrimonious.

18. Montezuma no longer seeks modification of Decision No. 71317 to authorize alternate financing of the arsenic treatment system facilities. It is reasonable and appropriate not to modify Decision No. 71317 to authorize alternate financing of any kind, but to adopt a provision declaring that the WIFA debt authorization approved in Decision No. 71317 has expired, that Montezuma is no longer authorized to apply for an arsenic remediation surcharge as provided in that Decision, and that Montezuma is no longer required to file an AOC for Well No. 4 or for the arsenic treatment project described in that Decision.

19. The transmission line resulting in the debt represented by the Rask Docket financing application is neither used nor useful, and it would be inappropriate for the Commission to approve such debt at this time. Additionally, because the proposal from Rask Construction, as submitted to the Commission with the Rask Docket financing application, appears to have been altered to omit a line item, any future request to obtain recovery of the costs of the transmission line must be accompanied by documentation, in the form of a detailed invoice, created by Rask Construction, breaking down the costs for labor, materials, and all other items and an accompanying affidavit from Mr. Rask attesting to the accuracy and completeness of the invoice.

20. It would be neither reasonable nor appropriate to approve the loan agreement included within the Olsen Docket because Well No. 4 is neither used nor useful at this time, and Montezuma should not be held responsible for any debt incurred as a result of its purchase, and the purchase price for the vehicle has already been paid in full, and the vehicle itself has already been included in plant in service for purposes of establishing rate base.

21. Regarding the Arias Docket financing application, we agree with Staff's position and shall allow $15,000 for the 8,000-gallon hydro-pneumatic tank and $3,541 for installation of the tank. We also approve calculation of the associated surcharge as proposed by Staff. However, the Company may not begin to collect any surcharge until: (1) Staff verifies that the tank is installed and operational, (2) the tank has received an AOC from ADEQ, (3) Staff has made its best efforts to verify the purchase price paid by Mr. Arias for the tank, and (4) the Company obtains Commission approval of proposed surcharge amounts for its various meter sizes. The Company shall file a letter in this Docket informing Staff and the Commission when the tank is installed and operational and has

received an AOC from ADEQ. Staff shall then conduct a field inspection to verify that the tank is installed and operational and has received an AOC from ADEQ. The Company shall then file an application for approval of its proposed surcharge amounts for its various meter sizes. The surcharges shall remain in effect only until such time as the Company's costs for the tank as approved herein have been collected from customers. When all of the costs that have been approved herein have been collected, the Company shall file a letter in this Docket stating that the approved costs have been collected and that the surcharge has terminated.

22. Montezuma requests authority to obtain a WIFA loan in the amount of $108,000, to cover the cost of purchasing four 20,000-gallon storage tanks from Cashion at $22,000 each, plus an additional $20,000 for engineering, permitting, and installation of the storage tanks. The request was supported by a quote from Cashion.

23. Regarding the WIFA Loan, Staff recommended the following:

a. That Montezuma be granted authority to incur an 18- to 22-year amortizing loan in an amount not to exceed $108,000 pursuant to a loan agreement with WIFA and at an interest rate not to exceed that available from WIFA, for the purpose of installing additional storage tanks;

b. That Montezuma be required, within 30 days after executing the WIFA Loan, to provide Staff's Utilities Division Director a copy of any WIFA Loan documents executed and to file with Docket Control a letter verifying that the WIFA Loan documents have been so provided;

c. That Montezuma be required to file, as a compliance item in this Docket, within 30 days after executing any financing transaction authorized herein, a notice confirming that the execution has occurred and a certification by an authorized Montezuma representative that the terms of the financing fully comply with the authorizations granted;

d. That any unused authorization to incur debt authorized herein expire on December 31, 2015;

e. That Montezuma be authorized to charge an infrastructure surcharge to meet

its WIFA Loan debt service and associated loan obligation, with the surcharge to become effective at a date and in a manner subsequently authorized by the Commission;

f. That Montezuma be directed to file in this Docket, upon filing of the loan closing notice and upon providing the loan documents to Staff, an application requesting to implement an associated surcharge;

g. That Staff be directed, within 30 days of Montezuma's filing of a surcharge implementation request, to calculate the appropriate WIFA surcharge, based on the actual loan debt service (interest and principal) payments and using the current customer count at the time of the loan closing to provide the cash flow adopted in this proceeding, and prepare and file a recommended order for Commission consideration;

h. That Montezuma be authorized to pledge its assets in the State of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection with the WIFA Loan; and

i. That Montezuma be authorized to engage in any transaction and to execute any documents necessary to effectuate the authorizations. (Ex. S-1 at 28-29.)

24. It is reasonable and appropriate to approve Montezuma's WIFA Loan request, subject to the conditions enumerated in Staff's recommendations described in Findings of Fact No. 23, modified to require Montezuma to file a copy of the executed WIFA Loan documents with the Commission's Docket Control rather than Staff's Utilities Division Director. Additionally, we find that it is appropriate to authorize a WIFA Loan surcharge, subject to the implementation approval process enumerated in Staff's recommendations, and three additional conditions:

a. Montezuma must segregate all funds collected under the WIFA Loan surcharge in a separate account and may use those funds only for the purpose of making debt service payments for the actual WIFA Loan debt service (principal and interest);

b. The WIFA Loan surcharge will expire automatically upon the end of the term

for the WIFA Loan, unless the WIFA Loan surcharge is first reduced or otherwise modified by Commission Order; and

c. If, when the WIFA Loan surcharge ends, Montezuma has collected more funds through the WIFA Loan surcharge than were needed to make the WIFA Loan debt service payments, Montezuma shall credit the amount of the overage in its next monthly billing, with each customer receiving an equal portion of the overage amount, and Montezuma shall file a notice with the Commission showing that such credits have been made.

25. Montezuma's customers now and in the future will benefit from the addition of the storage tanks, which will enhance both the availability of water to customers for general purposes and the availability of water for fire flow purposes, and it is appropriate to ensure that Montezuma has designated funds available to pay the WIFA Loan.

26. Approval or disapproval of a utility's long-term debt and other forms of financing is a necessary step in ratemaking, and the Commission has constitutional authority under Article 15, § 3 of the Arizona Constitution to retroactively approve or disapprove long-term debt and other forms of financing.

27. Montezuma is requesting retroactive approval of the long-term debt created through a lease agreement with Nile River, which was executed by Montezuma on March 22, 2012, and by Mr. Torbenson for Nile River on March 23, 2012, and in which Montezuma promised to pay a deposit of $734.46, and to make monthly payments of $342.09 each over a period of 36 months, to cover the $8,000 cost of an arsenic treatment system building constructed at the site for Well No. 1, for which Montezuma accepted delivery on May 10, 2012.

28. Montezuma is requesting retroactive approval of the long-term debt created through a lease agreement with Financial Pacific, which was executed by Montezuma on March 22, 2012, and in which Montezuma promised to pay an initial amount of $2,691.92, and to make monthly payments of $1,135.96 each over a period of 60 months, to cover the $38,000 cost of an arsenic treatment system obtained from Kevlor Design Group, LLC. The Financial Pacific lease also shows that Montezuma will have an option to purchase the equipment at the end of the lease term for $1.00.

29. The Nile River lease and Financial Pacific lease are capital leases that create long-term debt, for which Commission approval is required.

30. In regard to the Nile River lease and Financial Pacific lease, Montezuma and its owner have filed invalid and incomplete documents and have espoused positions and made legal arguments based on inaccurate information, with the result that Mr. Dougherty and the Commission have at times been misled. Montezuma's conduct in this regard has increased the extent of the filings made by Mr. Dougherty and the duration and complexity of this matter.

31. For the reasons described in the Discussion portion of this Decision, it is just and reasonable to disallow a significant portion of the legal expenses incurred by Montezuma and Ms. Olsen, because of the actions of Montezuma and Ms. Olsen that have increased the costs of this matter and because of the extent to which Montezuma's need for legal services has been caused by Montezuma and Ms. Olsen.

32. Montezuma's ratepayers have been benefited overall by Montezuma's obtaining financing of the arsenic treatment system and associated building, and it is reasonable and appropriate for the Commission to approve that portion of the $46,000 in long-term debt created by the Nile River and Financial Pacific leases that is associated with non-excessive plant and with arsenic media. It would not be consistent with standard ratemaking principles to approve the long-term debt associated with plant considered to constitute excess capacity, and we will not do so.

33. As discussed herein, it is reasonable and appropriate to capitalize the $16,280 cost for arsenic media reflected in the Financial Pacific lease, rather than including the cost as a chemical expense, and to allow depreciation of the capitalized arsenic media at the rate of 50 percent per year.

34. As a result of the adjustments that we are adopting herein, we find that the following are just and reasonable for Montezuma, and are in the public interest, and we will adopt them:

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OCRB/FVRB:	$81,567
Adjusted TY Revenues:	$101,276
Adjusted TY Operating Expenses:	$117,577
Adjusted TY Operating Income:	($16,301)
Total Operating Revenues:	$126,783
Total Operating Expenses:	$117,577
Total Operating Income:	$9,206
Revenue Increase:	$25,507
Percentage Increase:	25.18%
Rate of Return on FVRB:	11.29%

MONTHLY USAGE CHARGE:

5/8" x 3/4" Meter	$ 28.00
3/4" Meter	42.00
1" Meter	70.00
1 1/2" Meter	140.00
2" Meter	224.00
3" Meter	448.00
4" Meter	700.00
6" Meter	1,400.00

COMMODITY RATES:
(per 1,000 gallons)

5/8 x 3/4" & 3/4" Meter	
First Tier – 1 to 3,000 gallons	$2.45
Second Tier – 3,001 to 9,000 gallons	4.95
Third Tier – Over 9,000 gallons	6.25
1" Meter	
First Tier – 1 to 24,000 gallons	$4.95
Second Tier – Over 24,000 gallons	6.25
1 1/2" Meter	
First Tier – 1 to 62,000 gallons	$4.95
Second Tier – Over 62,000 gallons	6.25
2" Meter	
First Tier – 1 to 101,000 gallons	$4.95
Second Tier – Over 101,000 gallons	6.25
3" Meter	
First Tier – 1 to 218,000 gallons	$4.95
Second Tier – Over 218,000 gallons	6.25
4" Meter	
First Tier – 1 to 329,000 gallons	$4.95
Second Tier – Over 329,000 gallons	6.25

6" Meter	
First Tier – 1 to 695,000 gallons	$4.95
Second Tier – Over 695,000 gallons	6.25

SERVICE LINE & METER INSTALLATION CHARGES:
(Refundable pursuant to A.A.C. R14-2-405)

	Service Line	Meter	Total
5/8" x 3/4" Meter			
Same side of road	$ 370.00	$ 130.00	$ 500.00
Other side of road	670.00	130.00	800.00
3/4" Meter			
Same side of road	370.00	180.00	550.00
Other side of road	695.00	180.00	875.00
1" Meter			
Same side of road	400.00	225.00	625.00
Other side of road	775.00	225.00	1,000.00
1 1/2" Meter			
Same side of road	450.00	450.00	900.00
Other side of road	975.00	450.00	1,425.00
2" Meter Turbo			
Same side of road	550.00	900.00	1,450.00
Other side of road	1,450.00	900.00	2,350.00
2" Meter Compound			
Same side of road	550.00	1,575.00	2,125.00
Other side of road	1,825.00	1,575.00	3,400.00
3" Meter Turbo			
Same side of road	765.00	1,210.00	1,975.00
Other side of road	1,965.00	1,210.00	3,175.00
3" Meter Compound			
Same side of road	795.00	1,955.00	2,750.00
Other side of road	2,420.00	1,955.00	4,375.00
4" Meter Turbo			
Same side of road	1,055.00	2,120.00	3,175.00
Other side of road	2,980.00	2,120.00	5,100.00
4" Meter Compound			
Same side of road	1,095.00	2,930.00	4,025.00
Other side of road	3,495.00	2,930.00	6,425.00
6" Meter Turbo			
Same side of road	1,600.00	4,425.00	6,025.00
Other side of road	5,200.00	4,425.00	9,625.00
6" Meter Compound			
Same side of road	1,730.00	6,120.00	7,850.00
Other side of road	6,430.00	6,120.00	12,550.00

Charges differentiated by whether on same side of road as water main

SERVICE CHARGES:

Establishment	$40.00
Reconnection (Delinquent)	$50.00
Service Charge—After Hours at Customer Request	$35.00
Meter Test (If Correct)	$30.00

Deposit	*
Deposit Interest	*
Reestablishment (Within 12 Months)	**
NSF Check	$25.00
Deferred Payment (Per Month)	1.50%
Meter Re-Read (If Correct)	$15.00
Late Fee (Per Month)	***
Monthly Service Charge for Fire Sprinkler (All Meter Sizes)	****

* Per Commission rule A.A.C. R14-2-403(B)

** Months off system times the monthly minimum, per Commission rule A.A.C. R14-2-403(D)

*** 1.50% of the unpaid balance, after 15 days

**** 2.00% of the monthly minimum for a comparably sized meter connection, but no less than $10.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

35. In addition to its recommendations as to the rates and charges that should be approved for Montezuma, Staff recommended:

a. That *Montezuma* be permitted to collect from its customers a proportionate share of any privilege, sales, or use tax, per A.A.C. R14-2-409(D)(5);

b. That Montezuma be directed to docket with the Commission a schedule of its approved rates and charges within 30 days after the date the Decision in this matter is issued;

c. That Montezuma be directed to use the depreciation rates by individual NARUC account presented in Table B of Staff's Engineering Report;

d. That Montezuma be directed, as a compliance item in this matter, to notify its customers of the authorized rates and charges approved in this proceeding, and their effective date, in a form acceptable to Staff, by means of an insert in its next regularly scheduled billing and to file copies with Docket Control within 10 days of the date notice is sent to customers;

e. That Montezuma be directed to file a new rate case no later than June 30, 2017, using a test year ending no later than December 31, 2016;

f. That Montezuma be required to file with Docket Control, as a compliance item in this matter and within 90 days after the effective date of the Decision in this matter, for the Commission's review and consideration, at least three BMPs in

the form of tariffs that substantially conform to the templates created by Staff, which are available on the Commission's website; and

g. That Montezuma be authorized in its next rate case to request recovery of the actual costs associated with the BMPs implemented.

36. Staff's recommendations set forth in Findings of Fact No. 35(a) through (e) are reasonable and appropriate and should be adopted. Although the Commission continues to believe that the implementation of BMPs is valuable and in the public interest, in light of both Montezuma's acceptable level of water loss and its need to concentrate its efforts on improving its bookkeeping and recordkeeping practices and making the system improvements for which long-term debt is approved herein, it is reasonable and appropriate in this matter not to impose upon Montezuma a requirement to adopt BMPs.

37. Montezuma's failure to obtain approval from the Commission before entering into $32,000 in long-term debt in 2005 to purchase the site for Well No. 4 was a violation of A.R.S. §§ 40-301 and 40-302. Allegation I is substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302.

38. The evidence indicates that Montezuma's books and records reviewed during the rate case audit for its 2008-2009 rate case, which included its annual report for the 2007 test year, failed to reveal Montezuma's $32,000 long-term debt. This establishes that Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which is a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2). Allegation II is substantiated to the extent that it alleged Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which is a violation of Decision No. 67583 and A.A.C. R14-2-411(D)(1) and (2).

39. Montezuma included Well No. 4 as plant in service on its Annual Reports in 2007 through 2010, although Well No. 4 was not in service. By including Well No. 4 in plant in service in its Annual Reports, which are company records, Montezuma failed to maintain its records in compliance with the NARUC USOA, which is a violation of Decision No. 67583 and A.A.C. R14-2-411(D)(1) and (2). Allegation IV is substantiated to the extent that it alleged Montezuma failed to

maintain its Annual Reports in compliance with the NARUC USOA, which was a violation of Decision No. 67583 and A.A.C. R14-2-411(D)(1) and (2).

40. Montezuma, for a period of several years, did not provide its customers, at point of delivery, potable water that met federal and state safe drinking water standards, due to the water's exceeding the ADEQ and EPA MCL for arsenic and Montezuma's failure to treat the water. Montezuma now is providing its customers potable water that meets federal and state safe drinking water standards because it has installed and is operating an arsenic treatment system that is effectively remediating the arsenic concentration in the water. Allegation VII has been rendered moot, and it is dismissed with prejudice.

41. The evidence does not establish what statements Montezuma made to Commission investigators in January 2010 concerning Montezuma's Yavapai County zoning issues related to Well No. 4. As a result, Mr. Dougherty has failed to meet the burden of proof as to Allegation X, and Allegation X is dismissed with prejudice.

42. In its December 2009 billing, Montezuma invoiced an unauthorized arsenic surcharge of $10.11 per account, Montezuma collected this unauthorized surcharge from customers pursuant to that billing, and the surcharge funds so collected were not refunded to Montezuma's customers. Montezuma's charging of the unauthorized arsenic surcharge was a violation of Decision No. 71317. Allegation XI is substantiated.

43. In its April 2011 billing, Montezuma invoiced an unauthorized arsenic surcharge of $15.00 per account, Montezuma collected this unauthorized surcharge from customers pursuant to that billing, and the surcharge funds collected were refunded to Montezuma's customers after Staff directed Montezuma to issue refunds. Montezuma's charging of the unauthorized surcharge was a violation of Decision No. 71317. Allegation XII is substantiated.

44. Montezuma has alleged that records have been stolen from its offices in a series of burglaries beginning in October 2009 and continuing into 2010, and that its computer system has been compromised. Montezuma did not report these alleged events to the Commission and did not report these alleged thefts and intrusions to the police. Montezuma did not have a legal obligation to report to the police or to the Commission its belief that its records had been stolen or its computer

system compromised. While Montezuma cannot fairly be held responsible for the criminal acts of third parties, Montezuma does have a duty to maintain complete and authentic records, and that necessitates maintaining back-up records to ensure that complete and authentic information is available even after an unexpected event, such as computer failure, damage from water or fire, or theft. Thus, while we do not substantiate Allegation XV under the circumstances herein, Montezuma is directed that it needs to take reasonable measures to ensure the security of its original records and to maintain back-up records in the event its original records become unavailable. Because there is insufficient evidence to establish that the alleged theft of its records resulted in Montezuma's failure to maintain its records in accordance with the NARUC USOA and thus a violation of Decision No. 67583, Allegation XV is dismissed with prejudice.

45. Montezuma entered into long-term debt, in the form of the capital leases with Nile River and Financial Pacific, in March 2012, without first having obtained approval from the Commission. This was a violation of A.R.S. §§ 40-301 and 40-302.

46. Montezuma filed false or misleading information with the Commission on April 13, 2012, April 27, 2012, and October 25, 2012, when it filed invalid lease documents and made false or misleading statements presented as fact in a Legal Brief. In doing so, Montezuma violated the Procedural Order issued on April 9, 2012. Ms. Olsen's testimony as to her beliefs and knowledge concerning the validity of the personal one-page leases signed by her and by "Robin Richards" are not credible, and altered and incomplete lease documents were filed with the Commission by and on behalf of Montezuma. The circumstances indicate that this was done willfully and with knowledge of the falsity/misleading nature of the information. Allegation XVII is substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012. The remaining provisions of Allegation XVII are dismissed with prejudice.

47. Montezuma unlawfully collected $10.11 in the form of an arsenic surcharge from each of its customers and has not refunded those unlawfully collected funds. Thus, it is reasonable and appropriate to require Montezuma, in the first billing after the effective date of this Decision, to provide each of its customer accounts a credit of $10.11, which shall be listed separately on each customer bill as a "2009 unlawful arsenic surcharge refund." We find that this is a just and

reasonable remedy as to Allegation XI. We further find that it is just and reasonable to require Montezuma to make a filing, within 60 days after the effective date of this Decision, as a compliance item in this docket, demonstrating that its customers have received the credit in their bills as required herein.

48. The Commission depends upon accurate information being filed by the companies that it regulates. The facts of this case indicate that the Company and its owner knowingly filed what appear to be misleading information and documents with the Commission, apparently in an effort to avoid Commission jurisdiction. The Commission cannot condone such action under any circumstances. A.R.S. § 40-421(B) states that "upon request of the commission, the attorney general, or the county attorney of the proper county, shall aid in any investigation, hearing or trial conducted under the provisions of this chapter and shall institute and prosecute actions or proceedings for enforcement of the provisions of the constitution and statutes of this state affecting public service corporations and for punishment of all violations thereof." Because of the very serious nature of the Company's and owner's actions reflected in the record, we shall direct the Legal Division to consult with the Attorney General's Office regarding a referral for possible further action against Montezuma and its owner under Arizona law.

49. The Commission's authority to assess penalties and fines emanates directly from the Arizona Constitution, Article 15, Sections 16 and 19, as well as Title 40, Chapter 2, Article 9 of the Arizona Revised Statutes. In addition, the Commission's authority to impose fines is cumulative in nature. A.R.S. § 40-428 provides that "[a]ll penalties accruing shall be cumulative to each other, and an action for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer or employee thereof, or any other person, or be a bar to the exercise by the commission of its power to punish for contempt."

50. Considering the number of violations in this case, the repeated nature of those violations, and the Company's and Ms. Olsen's attempt to conceal the violations through repeated filings of erroneous documents, we find that a fine of $1,000 per violation is appropriate. Under A.R.S. § 40-425, twelve violations at $1,000 would be $12,000. Moreover, the Commission may

impose contempt fines in addition to any fines imposed under A.R.S. § 40-425 since its fining authority under A.R.S. § 40-424 is cumulative. Thus, the Commission will impose another $250 fine under A.R.S. § 40-424 upon the Company for each of the twelve violations and a $250 fine upon Ms. Olsen for her separate violations of the Commission orders, related statutes, and regulations, for a total fine under the contempt statute of $6,000. Altogether, the fines to be imposed in this case total $18,000.

51. A large fine for a company of this size, if imposed immediately and all at once, could have potentially adverse implications for Montezuma's customers. The Commission will therefore suspend payment of the fines by Montezuma and Ms. Olsen at this time. If Staff finds in its review of the Company's compliance reports that the Company and Ms. Olsen are timely complying with all the requirements of this Decision and with all statutes, rules, and regulations under the Commission's jurisdiction, Staff may recommend waiver of the fine or portions thereof after the various compliance periods. On the other hand, if Staff finds that the Company and Ms. Olsen are not timely complying with the requirements of this Decision, statutes, rules, or regulations under the Commission's jurisdiction, Staff shall make a recommendation to the Commission as to whether payment of the fine, or a portion thereof, is appropriate. The Company shall have an opportunity to comment on Staff's recommendation, and the Commission shall take the Company's comments into consideration when making any decision on the matter.

52. To ensure that the Commission is apprised of Montezuma's performance and conduct, we will require Staff to monitor Montezuma's compliance with this Decision and, to file in this docket, one year after the effective date of this Decision, a report detailing the status of Montezuma's compliance with this Decision and with all applicable Commission statutes, rules, Decisions, and Orders, and making a recommendation concerning whether additional monitoring should be conducted and whether an Order to Show Cause proceeding should be initiated or other adverse action should be taken.

53. Because an allowance for property tax expense is included in Montezuma's rates and will be collected from its customers, the Commission seeks assurances from Montezuma that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to

the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as 20 years. It is reasonable, therefore, that as a preventive measure, Montezuma shall annually file, as part of its annual report, an affidavit with the Utilities Division attesting that Montezuma is current in paying its property taxes in Arizona.

CONCLUSIONS OF LAW

1. Montezuma is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40.

2. Mr. Dougherty, as a person, was authorized to make a complaint against Montezuma under A.R.S. § 40-246, which does not require either that a complainant be a customer of the public service corporation or directly damaged.

3. The Commission has jurisdiction over Montezuma and the subject matter of this matter.

4. Notice of this matter was provided in accordance with the law.

5. The Nile River lease and Financial Pacific lease are capital leases that create long-term debt, for which Commission approval is required.

6. Approval or disapproval of a utility's long-term debt and other forms of financing is a necessary step in ratemaking, and the Commission has constitutional authority under Article 15, § 3 of the Arizona Constitution to retroactively approve or disapprove long-term debt and other forms of financing.

7. The rates and charges authorized herein are just and reasonable and in the public interest.

8. The financings approved herein are for lawful purposes, within Montezuma's powers, compatible with the public interest, with sound financial practices, and with the proper performance by Montezuma of service as a public service corporation, and will not impair Montezuma's ability to perform that service.

...

...

9. The financings approved herein are for the purposes stated in the applications related thereto and described herein and are reasonably necessary for those purposes, which are not wholly or in part reasonably chargeable to operating expenses or to income.

10. Regarding Mr. Dougherty's Complaint, we conclude as follows:

a. Allegation I is substantiated to the extent that it alleged Montezuma's failure to obtain approval from the Commission before entering into the long-term debt was a violation of A.R.S. §§ 40-301 and 40-302.

b. Allegation II is substantiated to the extent that it alleged Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).

c. Allegation IV is substantiated to the extent that Montezuma failed to maintain its Annual Reports, which are company records, in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).

d. Allegation VII has been rendered moot, and it is dismissed with prejudice.

e. Mr. Dougherty has failed to meet the burden of proof as to Allegation X, and it is dismissed with prejudice.

f. Allegation XI is substantiated. The evidence establishes that an arsenic surcharge of $10.11 per account was invoiced in and collected from the December 2009 billing, unlawfully and in violation of Decision No. 71317.

g. Allegation XII is substantiated. The evidence establishes that an arsenic surcharge of $15.00 per account was invoiced in and collected from the April 2011 billing, unlawfully and in violation of Decision No. 71317.

h. Allegation XV is dismissed with prejudice because there is insufficient evidence to establish that the theft of its records resulted in Montezuma's failure to maintain its records in accordance with the NARUC USOA and thus in a violation of Decision No. 67583.

i. Allegation XVII is substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012. The remaining provisions of the Allegation are dismissed with prejudice.

11. Under Article 15, Sections 16 and 19 of the Arizona Constitution and A.R.S. Title 40, Chapter 2, Article 9, the Commission has authority to impose monetary penalties on Montezuma, and to impose those penalties cumulatively, for each of Montezuma's violations of a Commission Decision, order, rule, or requirement and for each of Montezuma's violations of a provision of A.R.S. Title 40, Chapter 2.

12. It is just and reasonable and in the public interest to take the actions described in Findings of Fact Nos. 18 through 24, 31 through 34, 36, 47 through 48, and 50 through 53.

ORDER

IT IS THEREFORE ORDERED that Montezuma Rimrock Water Company, LLC shall file with Docket Control, as a compliance item in this docket, before May 1, 2014, revised rate schedules setting forth the following rates and charges:

MONTHLY USAGE CHARGE:

5/8" x 3/4" Meter	$ 28.00
3/4" Meter	42.00
1" Meter	70.00
1 1/2" Meter	140.00
2" Meter	224.00
3" Meter	448.00
4" Meter	700.00
6" Meter	1,400.00

COMMODITY RATES:
(per 1,000 gallons)

5/8 x 3/4" & 3/4" Meter	
First Tier – 1 to 3,000 gallons	$2.45
Second Tier – 3,001 to 9,000 gallons	4.95
Third Tier – Over 9,000 gallons	6.25
1" Meter	
First Tier – 1 to 24,000 gallons	$4.95
Second Tier – Over 24,000 gallons	6.25

1 1/2" Meter	
First Tier – 1 to 62,000 gallons	$4.95
Second Tier – Over 62,000 gallons	6.25
2" Meter	
First Tier – 1 to 101,000 gallons	$4.95
Second Tier – Over 101,000 gallons	6.25
3" Meter	
First Tier – 1 to 218,000 gallons	$4.95
Second Tier – Over 218,000 gallons	6.25
4" Meter	
First Tier – 1 to 329,000 gallons	$4.95
Second Tier – Over 329,000 gallons	6.25
6" Meter	
First Tier – 1 to 695,000 gallons	$4.95
Second Tier – Over 695,000 gallons	6.25

SERVICE LINE & METER INSTALLATION CHARGES:
(Refundable pursuant to A.A.C. R14-2-405)

	Service Line	Meter	Total
5/8" x 3/4" Meter			
Same side of road	$ 370.00	$ 130.00	$ 500.00
Other side of road	670.00	130.00	800.00
3/4" Meter			
Same side of road	370.00	180.00	550.00
Other side of road	695.00	180.00	875.00
1" Meter			
Same side of road	400.00	225.00	625.00
Other side of road	775.00	225.00	1,000.00
1 1/2" Meter			
Same side of road	450.00	450.00	900.00
Other side of road	975.00	450.00	1,425.00
2" Meter Turbo			
Same side of road	550.00	900.00	1,450.00
Other side of road	1,450.00	900.00	2,350.00
2" Meter Compound			
Same side of road	550.00	1,575.00	2,125.00
Other side of road	1,825.00	1,575.00	3,400.00
3" Meter Turbo			
Same side of road	765.00	1,210.00	1,975.00
Other side of road	1,965.00	1,210.00	3,175.00
3" Meter Compound			
Same side of road	795.00	1,955.00	2,750.00
Other side of road	2,420.00	1,955.00	4,375.00
4" Meter Turbo			
Same side of road	1,055.00	2,120.00	3,175.00
Other side of road	2,980.00	2,120.00	5,100.00
4" Meter Compound			
Same side of road	1,095.00	2,930.00	4,025.00
Other side of road	3,495.00	2,930.00	6,425.00

6" Meter Turbo			
Same side of road	1,600.00	4,425.00	6,025.00
Other side of road	5,200.00	4,425.00	9,625.00
6" Meter Compound			
Same side of road	1,730.00	6,120.00	7,850.00
Other side of road	6,430.00	6,120.00	12,550.00

Charges differentiated by whether on same side of road as water main

SERVICE CHARGES:

Establishment	$40.00
Reconnection (Delinquent)	$50.00
Service Charge—After Hours at Customer Request	$35.00
Meter Test (If Correct)	$30.00
Deposit	*
Deposit Interest	*
Reestablishment (Within 12 Months)	**
NSF Check	$25.00
Deferred Payment (Per Month)	1.50%
Meter Re-Read (If Correct)	$15.00
Late Fee (Per Month)	***
Monthly Service Charge for Fire Sprinkler (All Meter Sizes)	****

* Per Commission rule A.A.C. R14-2-403(B)

** Months off system times the monthly minimum, per Commission rule A.A.C. R14-2-403(D)

*** 1.50% of the unpaid balance, after 15 days

**** 2.00% of the monthly minimum for a comparably sized meter connection, but no less than $10.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

The Company may collect from its customers a proportionate share of any privilege, sales, or use tax, per A.A.C. R14-2-409(D)(5).

IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service provided on and after May 1, 2014.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall, as a compliance item in this matter, notify its customers of the rates and charges authorized herein and their effective date, in a form acceptable to the Commission's Utilities Division Staff, by means of an insert in its next regularly scheduled billing and, within 10 days after the notice is sent to its customers, docket copies of the notice with the Commission's Docket Control.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall use the depreciation rates by individual NARUC account presented in Table B of Staff's Engineering Report, and the separate depreciation rate for arsenic media authorized herein.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall, by June 30, 2017, file with the Commission a new permanent rate case application that uses a test year ending no later than December 31, 2016.

IT IS FURTHER ORDERED that the authorizations and obligations granted to and required of Montezuma Rimrock Water Company, LLC in Decision No. 71317 are modified as follows: the authority to obtain a WIFA loan has expired, the authority to apply for an arsenic remediation surcharge is expired, and the obligation to file an Approval of Construction for Well No. 4 or for the arsenic treatment project described in that Decision is eliminated.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC's request for approval of financing in the form of a loan agreement in which Montezuma promised to pay Rask Construction the sum of $68,592, with interest from May 1, 2012, at a rate of 6 percent per year, for installation of a water line from Well No. 4 to Well No. 1 is hereby denied.

IT IS FURTHER ORDERED that if Montezuma Rimrock Water Company, LLC desires in the future to request recovery of the costs of the transmission line between Well No. 4 and Well No. 1, Montezuma Rimrock Water Company, LLC shall include with its request documentation, in the form of a detailed invoice, created by Rask Construction, breaking down the costs for labor, materials, and all other items and an accompanying affidavit from Mr. Rask attesting to the accuracy and completeness of the invoice.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC's request for approval of financing in the form of a loan agreement in which Montezuma promised to pay its owner, Patricia D. Olsen, the sum of $21,377, with interest from August 30, 2011, at a rate of 6 percent per year, for the purchase of the Well No. 4 site and a company vehicle, is hereby denied.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC's request for approval of financing in the form of a loan agreement in which Montezuma promised to pay Sergei Arias the sum of $15,000 for the purchase of an 8,000 gallon hydro-pneumatic tank is hereby granted to the extent discussed above. Staff's estimated installation cost of $3,541 is reasonable and shall be adopted as well. We also approve calculation of the associated surcharge as proposed by Staff. However, before the Company may begin collecting any associated surcharge for the pressure tank,

the Staff shall verify that the Company has complied with Findings of Fact No. 21. Once all of the costs are collected, the Company shall comply with the steps set forth in Findings of Fact No. 21.

IT IS FURTHER ORDERED, with regard to Montezuma Rimrock Water Company, LLC's request for approval of financing in the form of a loan agreement with the Water Infrastructure Finance Authority of Arizona, that:

1. Montezuma is authorized to incur an 18- to 22-year amortizing loan in an amount not to exceed $108,000 pursuant to a loan agreement with WIFA, at an interest rate not to exceed that available from WIFA, for the purpose of installing storage tanks;
2. Montezuma shall, within 30 days after executing the WIFA loan, file with the Commission's Docket Control, as a compliance item in this docket, a true and complete copy of all WIFA loan documents executed;
3. Montezuma shall, within 30 days after executing any financing transaction authorized herein, file with the Commission's Docket Control, as a compliance item in this docket, a notice confirming that the execution has occurred and a certification by an authorized Montezuma representative that the terms of the financing fully comply with the authorizations granted;
4. Any unused authorization to incur debt authorized herein shall expire on December 31, 2015;
5. Montezuma is authorized, subject to the requirement for a surcharge implementation application to be filed and a surcharge amount and effective date to be approved by the Commission, to charge a WIFA loan surcharge to meet its WIFA loan debt service and associated loan obligation;
6. After having filed in this docket a true and complete copy of all WIFA loan documents executed, Montezuma shall file in this docket an application requesting permission to implement the associated WIFA loan surcharge;
7. Staff shall, within 30 days after Montezuma files an application requesting permission to implement the surcharge, calculate the appropriate WIFA loan surcharge, based on the actual loan debt service (interest and principal) payments and using the current

customer count at the time of the loan closing, to provide the cash flow adopted in this proceeding, and prepare and file a recommended order for Commission consideration;

8. Montezuma is authorized, in connection with the WIFA loan approved herein, to pledge its assets in the State of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104;

9. Montezuma is authorized to engage in any transaction and to execute any documents necessary to effectuate the authorizations as to the WIFA loan approved herein;

10. Such authority is expressly contingent upon Montezuma's use of the proceeds from the WIFA loan solely for the purposes set forth in its April 12, 2013, application in this matter;

11. Montezuma shall segregate all funds collected under the WIFA loan surcharge in a separate account and may use those funds only for the purpose of making the debt service payments for the actual WIFA loan debt service (principal and interest);

12. The WIFA loan surcharge will expire automatically upon the end of the term for the WIFA loan, unless the WIFA loan surcharge is first reduced or otherwise modified by Commission Order; and

13. If, when the WIFA loan surcharge ends, Montezuma has collected more funds through the WIFA loan surcharge than were needed to make the WIFA loan debt service payments, Montezuma shall credit the amount of the overage in its next monthly billing, with each customer receiving an equal portion of the overage amount, and Montezuma shall file a notice with the Commission showing that such credits have been made.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC's request for retroactive approval of long-term debt resulting from a 3-year lease with Nile River Leasing, L.L.C., with a principal amount of $8,000, through which Montezuma obtained the building housing its arsenic treatment system, is hereby approved.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC's request for retroactive approval of long-term debt resulting from a 5-year lease with Financial Pacific Leasing,

LLC, with a principal amount of $38,000, through which Montezuma obtained its arsenic treatment system, is hereby approved except as to $13,684, which represents excess capacity in the arsenic treatment system.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall capitalize the cost of its arsenic media and depreciate such arsenic media cost at a rate of 50 percent per year.

IT IS FURTHER ORDERED, as to John E. Dougherty's Formal Complaint against Montezuma Rimrock Water Company, LLC, that:

1. Allegation I is substantiated to the extent that it alleged Montezuma's failure to obtain approval from the Commission before entering into the long-term debt was a violation of A.R.S. §§ 40-301 and 40-302.
2. Allegation II is substantiated to the extent that it alleged Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).
3. Allegation IV is substantiated to the extent that Montezuma failed to maintain its Annual Reports, which are company records, in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2).
4. Allegation VII has been rendered moot, and it is dismissed with prejudice.
5. Mr. Dougherty has failed to meet the burden of proof as to Allegation X, and it is dismissed with prejudice.
6. Allegation XI is substantiated. The evidence establishes that an arsenic surcharge of $10.11 per account was invoiced in and collected from the December 2009 billing, unlawfully and in violation of Decision No. 71317.
7. Allegation XII is substantiated. The evidence establishes that an arsenic surcharge of $15.00 per account was invoiced in and collected from the April 2011 billing, unlawfully and in violation of Decision No. 71317.

8. Allegation XV is dismissed with prejudice because there is insufficient evidence to establish that the theft of its records resulted in Montezuma's failure to maintain its records in accordance with the NARUC USOA and thus in a violation of Decision No. 67583.

9. Allegation XVII is substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012. The remaining provisions of the Allegation are dismissed with prejudice.

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall, in its first billing after the effective date of this Decision, provide each of its customer accounts a credit of $10.11, which shall be listed separately on each customer bill as a "2009 unlawful arsenic surcharge refund."

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall, within 60 days after the effective date of this Decision, file with the Commission's Docket Control, as a compliance item in this docket, documentation demonstrating that all of its customers have received the $10.11 "2009 unlawful arsenic surcharge refund" credit in their bills as required herein.

IT IS FURTHER ORDERED that pursuant to the Commission's authority under A.R.S. § 40-425, we impose a fine upon the Company in the amount of $1,000 for each of the twelve violations found in this Order, for a total fine of $12,000. Further, pursuant to our contempt authority under A.R.S. § 40-424, we impose an additional $250 per violation upon the Company and an additional $250 per separate violation upon Ms. Patricia Olsen, for total contempt fines of $6,000. Altogether, the fines imposed upon the Company and/or Ms. Olsen total $18,000. Because the Commission desires to avoid any potentially adverse impact on the Company's customers, the Commission hereby suspends payment of the fines by Montezuma and Ms. Olsen at this time, subject to the provisions of Findings of Fact No. 51 of this Decision.

IT IS FURTHER ORDERED that because of the very serious nature of the Company's and owner's actions reflected in the record, the Commission directs the Legal Division to consult with the Attorney General's Office regarding a referral for possible further action against Montezuma and its owner under Arizona law.

IT IS FURTHER ORDERED that to ensure the Commission is apprised of Montezuma Rimrock Water Company, LLC's performance and conduct, the Commission's Utilities Division shall monitor Montezuma Rimrock Water Company, LLC's compliance with this Decision for the next 24 months. Every six months from the effective date of this Order and for a period of 24 months, the Company shall file a compliance report regarding its adherence to the requirements of this Decision and Commission rules, regulations, and statutes. Within 2 months after each of the Company's filings, Staff shall file a Compliance Report detailing the status of Montezuma Rimrock Water Company, LLC's compliance with this Decision and with all applicable Commission statutes, rules, Decisions, and Orders during the period in question and making a recommendation concerning the Company's compliance or lack thereof, and whether a Show Cause proceeding should be initiated and other adverse action taken.

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IT IS FURTHER ORDERED that ratepayers shall not be required to pay any portion of any fine imposed herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of May 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

SERVICE LIST FOR: MONTEZUMA RIMROCK WATER COMPANY

DOCKET NOS.: W-04254A-12-0204; W-04254A-12-0205; W-04254A-12-0206; W-04254A-12-0207; W-04254A-11-0323; W-04254A-08-0361; and W-04254A-08-0362

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ARIZONA CORPORATION COMMISSION

BOB BURNS
COMMISSIONER

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May 29, 2014

RE: Montezuma Rimrock Water Company, L.L.C., Docket Nos. W-04254A-12-0204; W-04354A-12-0205; W-04254A-12-0206; W-0425A-12-0207; W-0425A-11-0323; W-04254A-08-0361 AND W-04254A-0862.

Dissent by Commissioner Bob Burns

I opted to dissent in this case, not because I oppose granting the Company appropriate rate relief, but because I believe that more stringent enforcement actions are warranted. I was appalled by Ms. Olsen's behavior during this proceeding and have serious concerns about her ability to appropriately conduct herself moving forward. My fear is that her poor decision-making, which includes established evidence that she sought to avoid Commission review by entering into financing and leasing agreements prior to making requisite filings, may put ratepayers at risk. The Recommended Order and Opinion ("ROO") passed despite my "no" vote; thus, I decided to take this opportunity to express my thoughts via a dissent letter.

I realize that my colleagues passed this ROO because they believe doing so was necessary to ensure that the Company's customers have safe and reliable water. As discussed below, I continue to have concerns about the evidence supporting the conclusion reached by Staff and my colleagues that the Company is providing safe and reliable water.

I am concerned that our Staff's review procedures do not go far enough given the fact that Ms. Olsen's misrepresentations to the Commission were uncovered through the work of John Dougherty, an interested third party. As noted in the ROO, the Administrative Law Judge concluded that six of his nine allegations were substantiated.

I considered proposing an interim manager, but did not do so because the consensus from the dais in April seemed to be against that based upon Staff's assessment that Ms. Olsen was providing safe and reliable drinking water. Staff said that there was no need to replace Ms. Olsen with an interim manager for this reason and also because there has been no harm to the ratepayers. My understanding is that we have rules and statutes in place to protect the ratepayers from the exact conduct Ms. Olsen was engaging in. However, as this case proves, consistent violation of the rules and statutes does not always warrant replacement of the violator with an interim manager, so long as an assessment is made that the owner is providing safe and reliable water and additional monitoring is put in place.

This conclusion leads me to another question: given Ms. Olsen's deceptive conduct before the Commission, what assurance is there that she provided accurate information to ADEQ? Having been subject to a regulatory agency's inspection practices during my time as a small business owner, I have observed different levels of scrutiny by different inspectors. If unaware of this operator's potential to engage in deceptive behavior, ADEQ may not have been as thorough as it could have been. That said, I

plan to meet with Staff to familiarize myself with ADEQ processes and the role that ADEQ compliance plays in our determinations of what best serves the public interest.

Alternatively, I considered looking into revoking the Company's Certificate of Convenience and Necessity to provide service. I was told the risk to customers would be too high and thus, decided not to proceed.

I also have concerns about ratepayers picking up the cost of a used pressure tank that, in my view, could potentially be an attempt to channel money within the family of the Company operator with the ratepayers picking up the cost. Mr. Olea commented that, as long as the price paid for the tank was "reasonable" (which Staff concluded it was), Staff was not concerned about how much Ms. Olsen's son paid for the tank. This causes me concern because Ms. Olsen's son specifically purchased the tank *at the direction of his mother, the Company's owner and operator*, because she did not have the funds to do so. Does this not make him an agent of the company? Again, there was nothing in the record to indicate that this specific tank was appropriate for the system and would become operational. Given the lack of clarity surrounding the purchase of this tank, and given Ms. Olsen's claim that there is absolutely no paper trail for it, I am not comfortable authorizing its purchase by the Company. I also found it interesting that the Company failed to indicate that the $2,581.70 deposit should be used to offset the $15,000 cost of the tank.

That said, I appreciate my fellow Commissioners' efforts in proposing amendments to add accountability to this process. I was happy to support a majority of these amendments—including imposing suspended fines and referring this case to the AG's office for further investigation. In my opinion, the actions taken were inadequate to address Ms. Olsen's conduct and I would have preferred taking further action as discussed above. Thus, I must dissent.

Sincerely,

Robert L. Burns
Commissioner